

GUIDELINE ANSWERS

PROFESSIONAL PROGRAMME

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MODULE 1



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

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These answers have been written by competent persons and the Institute hope that the GUIDELINE ANSWERS will assist the students in preparing for the Institute's examinations. It is, however, to be noted that the answers are to be treated as model answers and not as exhaustive and the Institute is not in any way responsible for the correctness or otherwise of the answers compiled and published herein.

The Guideline Answers contain the information based on the Laws/Rules applicable at the time of preparation. However, students are expected to be updated with the applicable amendments which are as follows:

CS Examinations

December Session

June Session

Applicability of Amendments to Laws

upto 31 May of that Calendar year

upto 30 November of previous Calendar Year

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GOVERNANCE, RISK MANAGEMENT, COMPLIANCES AND ETHICS

MODULE 1 PAPER 1

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

PART- I

Question 1

- (a) ABC Ltd. is a publicly listed company that operates in the technology sector. The company has recently appointed Ravi Sharma as an independent director. Below is the information about Sharma and his family :

Skills, Experience, and Knowledge :

- Sharma has a degree in law and over 15 years of experience in corporate governance and legal matters in the tech industry. He has been a legal advisor to various technology companies and has significant experience in corporate restructuring and mergers.
- He does not have specific experience in finance, sales, or marketing but has been involved in several board-level decision-making processes in his previous roles.

Family Members :

- Sharma's father, Shankar Sharma, is a promoter and director of XYZ Ltd., a company in the same industry. Sharma's sister, Priya Sharma, is a director in XYZ Ltd and holds shares in XYZ Ltd.

Financial and Indebtedness Status of Relatives :

- Sharma's father, Shankar Sharma, had personally guaranteed a loan of ' 60 lakh for XYZ Ltd. to the bank in the last financial year. There is no record of any other indebtedness or security provided by Ravi Sharma's relatives for the company.

Based on the above information, do you believe that Ravi Sharma qualifies to be appointed as an independent director of ABC Ltd. as per Rule 5 of the Companies (Appointment and Qualifications of Directors) Rules, 2014 ? Justify your answer with reference to the specific criteria mentioned in Rule 5.

(5 marks)

- (b) MNC Limited is a public company that adheres to the corporate governance norms under the Companies Act, 2013. The company has a Board of Directors, along with a Company Secretary.

In January 2024, the Board held a meeting, and the next meeting was scheduled for May 2024. However, due to unforeseen circumstances, the Chairman decided to adjourn the May meeting without any objection from the majority of the directors present.

Required :

- (i) Narrate the procedure for convening a Board meeting. Who is authorized to summon a meeting ? Is it in Chairman's Authority to adjourn the meeting ?

- (ii) What is the minimum number of Board meetings a company must hold in a calendar year? Also, explain the maximum interval allowed between two consecutive meetings.
- (c) TechnoPro Solutions Limited is a public company listed on a recognized stock exchange and adheres to the corporate governance norms under the Companies Act, 2013, as well as the SEBI (LODR) Regulations, 2015. As part of its corporate governance practices, TechnoPro Solutions Limited has formed an Audit Committee of the Board.

The Board of Directors is preparing the annual report and is required to disclose the details related to the Audit Committee under Section 177(8) of the Companies Act, 2013, as well as under SEBI (LODR) Regulations, 2015.

Required :

- (i) What specific disclosures should TechnoPro Solutions Limited make in the Board's report regarding the Audit Committee under Section 177(8) of the Companies Act, 2013?
- (ii) Explain the disclosures that should be made in the corporate governance section of the annual report regarding the Audit Committee as per SEBI (LODR) Regulations, 2015.

(5 marks)

- (d) CompliServe Solutions Limited is a public company adhering to the provisions of the Companies Act, 2013. As part of its corporate governance practices, the company is required to implement various policies, including CSR policy, Risk Management policy, Vigil Mechanism policy, and Nomination & Remuneration Policy.

- (i) Describe what the CSR policy of the company must include?
- (ii) What is required to be ensured under Companies Act, 2013 by the Nomination and Remuneration Committee while formulating the Nomination and Remuneration Policy?

Answer 1(a)

Mr. Ravi Sharma qualifies to be appointed as an independent director of ABC Ltd. under Rule 5 of the Companies (Appointment and Qualifications of Directors) Rules, 2014. because:

Skills, Experience, and Knowledge (Rule 5(1)):

Mr. Sharma meets the criteria under Rule 5(1), which requires an independent director to possess appropriate skills, experience, and knowledge in one or more fields such as finance, law, management, sales, marketing, administration, research, corporate governance, technical operations, or other disciplines related to the company's business. Mr. Sharma has a law degree and over 15 years of experience in corporate governance and legal matters in the technology sector, which is relevant to ABC Ltd.'s business. Although he does not have experience in finance, sales, or marketing, his expertise in corporate governance and law qualifies him as an independent director under the specified criteria.

Indebtedness or Financial Connections of Relatives (Rule 5(2)): The rule specifies that none of the relatives of an independent director should be indebted to the company, its holding, subsidiary, or associate companies, or their promoters or directors, nor should they have provided any guarantee or security for a third party's indebtedness exceeding 50 lakhs.

Analysis of Relatives:

Mr. Sharma's Father (Mr. Shankar Sharma):

Indebtedness: Mr. Sharma's father is not indebted to ABC Ltd. or its affiliates, so this does not violate Rule 5(2)(i).

Guarantee/Indebtedness: Mr. Sharma's father has personally guaranteed a loan of ₹60 lakhs for XYZ Ltd., but since XYZ Ltd. is a separate company from ABC Ltd., this does not affect the qualification criteria under Rule 5(2)(ii). The guarantee is for a loan related to XYZ Ltd., not ABC Ltd., and thus does not disqualify Mr. Sharma.

Mr. Sharma's sister: (Ms. Priya Sharma)

She has no indebtedness nor has she given a guarantee. Hence no violation of Rule 5(2).

Mr. Ravi Sharma satisfies the qualifications under Rule 5(1) regarding his skills, experience, and knowledge. There is no violation of Rule 5(2) regarding indebtedness or guarantees by his relatives, as the financial connections (the guarantee of 60 lakhs by his father) and the shareholding by his sister relate to XYZ Ltd., a separate company, not ABC Ltd. Therefore, Mr. Ravi Sharma is qualified to be appointed as an independent director of ABC Ltd. according to Rule 5 of the Companies (Appointment and Qualifications of Directors) Rules, 2014.

Answer 1(b)

- (i) Usually the Chairman of the Board convenes a meeting of the Board through the Company Secretary.

1. People Authorized to Summon a Board Meeting for MNC Limited:

Any Director of MNC Limited: Any director of MNC Limited has the authority to summon a Board meeting at any time.

Company Secretary: The Company Secretary of MNC Limited (if appointed) or, in the absence of a Company Secretary, any person authorized by the Board of MNC Limited in this regard, is responsible for convening a Board meeting based on the requisition of a director.

Consultation: When a Board meeting is being convened, the Company Secretary or the authorized person must do so in consultation with The Chairman of MNC Limited (if available), or In the absence of the Chairman, the Managing Director (MD) of MNC Limited, or In the absence of both, the Whole-time Director of MNC Limited (if any) unless otherwise provided in the Articles.

Requisition by a Director: If a director of MNC Limited requisitions a Board meeting, the Company Secretary or the authorized person must convene the meeting in consultation with the appropriate individuals listed above.

2. Adjournment of the Board Meeting at MNC Limited:

Chairman's Authority: The Chairman of MNC Limited has the authority to adjourn a Board meeting for any reason, unless there is dissent from the majority of directors present at the meeting.

No Objection from Majority: The Chairman of MNC Limited may adjourn the meeting at any stage if the majority of directors present do not object to the adjournment.

- (ii) **Minimum Number of Board Meetings and Maximum Interval between Meetings for MNC Limited:**

1. Minimum Number of Board Meetings in a Calendar Year for MNC Limited: MNC Limited is required to hold at least four meetings of the Board in each calendar year.
2. Maximum Interval between Two Consecutive Board Meetings at MNC Limited: The maximum interval between two consecutive Board meetings at MNC Limited must not exceed 120 days.

Answer 1(c)

(i) Specific Disclosures TechnoPro Solutions Limited should make in the Board's Report regarding the Audit Committee under Section 177(8) of the Companies Act, 2013:

Under Section 177(8) of the Companies Act, 2013, the Board's report must disclose the following information related to the Audit Committee:

1. **Composition of the Audit Committee:** The Board's report must specify the composition of the Audit Committee, including the names of the members and the Chairperson.
2. **Acceptance or Rejection of Audit Committee Recommendations:**
 - If the Board of TechnoPro Solutions Limited has not accepted any recommendation made by the Audit Committee, the Board is required to disclose this fact in the Board's report.
 - Along with this, the reasons for not accepting the recommendation must be provided.

These disclosures ensure that shareholders and stakeholders are informed about the functioning and decisions made by the Audit Committee and whether the Board is following their recommendations.

(ii) Disclosures to be made in the Corporate Governance Section of the Annual Report Regarding the Audit Committee as Per SEBI (LODR) Regulations, 2015:

According to the SEBI (LODR) Regulations, 2015, the following disclosures should be made in the Corporate Governance section of the annual report regarding the Audit Committee:

1. *Brief Description of Terms of Reference:* A brief overview of the terms of reference or functions of the Audit Committee should be provided. This includes the committee's role in overseeing financial reporting, internal controls, and compliance with legal requirements.
2. *Composition of the Audit Committee:* The composition of the Audit Committee should be disclosed, including the names of the members and the Chairperson. This provides transparency about the members responsible for overseeing the company's financials and audit processes.
3. *Meetings and Attendance:* The number of meetings held by the Audit Committee during the financial year and the attendance of each member at these meetings should be disclosed. This ensures stakeholders are aware of the committee's active participation and engagement in overseeing the company's audit and financial practices.

Further, as per Regulation 46, the website of the Company shall disclose at all times composition of various committees of board of directors.

These disclosures are part of the broader corporate governance reporting requirements for listed companies and aim to enhance transparency, accountability, and trust in the company's financial practices.

Answer 1(d)

A Company has to formulate specific policies in different areas of operations that help to bring uniformity in processes by clearly defining the business approach. Some of the policies are legally required, some are organisational needs and some are voluntarily made as part of good governance.

(i) Corporate Social Responsibility Policy

Section 135(3) (a) provides that the CSR Committee of the Board shall formulate and recommend to the Board, a CSR Policy which shall inter-alia, include the following namely –

- A list of CSR projects or programs which the company plans to undertake within the areas or subjects specified in schedule VII of the Act, specifying modalities of execution of such project or programs and implementation schedules for the same.
- Monitoring process of such projects or programs.
- A clause specifying that the surplus arising out of the CSR projects or programs or **activities shall not form part of the business profit of the company.**

(ii) Nomination and Remuneration Policy: Section 178 (3) of the Companies Act 2013 provides that the Nomination and Remuneration Committee shall formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees. Section 178(4) provides that the Nomination and Remuneration Committee shall, while formulating the policy ensure that-

- (a) the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully;
- (b) relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and
- (c) remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals.

The policy shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's report.

Attempt all parts of either Q. No. 2 or Q. No. 2A

Question 2

- (a) Eco Green Ltd., a publicly listed company in the renewable energy sector, is in the process of enhancing its sustainability disclosures for the financial year 2025. The company is planning to align its reporting with the IFRS Sustainability Disclosure Standards and is particularly interested in implementing IFRS S1 and IFRS S2.

The Board of Directors has asked for a detailed report on how the company should incorporate these two standards into its annual reporting. What key disclosures must be made to align with global best practices ?

- (b) You are a Corporate Governance professional engaged by PQR Ltd., a publicly listed company, to help review its corporate governance framework. The company is seeking your guidance on ensuring compliance with Regulation 62 of SEBI (LODR) Regulations, 2015, related to the disclosure of key corporate governance information on its website. Advise the key items that the company is required to disclose on its website under Regulation 62 of SEBI (LODR) Regulations, 2015.
- (c) As a Company Secretary of LMN Ltd., you are tasked with drafting a Board Charter to address current governance challenges, including unclear roles between the Board, CEO, and Management, as well as issues with related party transactions and conflicts of interest. Draft the key sections to be included in the Board Charter.

(5 marks each)

Answer 2(a)

IFRS S1 is effective for annual reporting periods beginning on or after 1 January 2024.

The objective of IFRS S1 is to require an entity to disclose information about its sustainability-related risks and opportunities that is useful to users of general purpose financial reports in making decisions relating to providing resources to the entity.

IFRS S1 requires an entity to disclose information about all sustainability-related risks and opportunities that could reasonably be expected to affect the entity's cash flows, its access to finance or cost of capital over the short, medium or long term ').

In particular, an entity is required to provide disclosures about:

- (a) the governance processes, controls and procedures the entity uses to monitor, manage and oversee sustainability-related risks and opportunities;
- (b) the entity's strategy for managing sustainability-related risks and opportunities;
- (c) the processes the entity uses to identify, assess, prioritise and monitor sustainability-related risks and opportunities; and
- (d) the entity's performance in relation to sustainability-related risks and opportunities, including progress towards any targets the entity has set or is required to meet by law or regulation.

IFRS S2 is effective for annual reporting periods beginning on or after 1 January 2024

The objective of IFRS S2 is to require an entity to disclose information about its climate-related risks and opportunities that is useful to users of general purpose financial reports in making decisions relating to providing resources to the entity.

IFRS S2 requires an entity to disclose information about climate-related risks and opportunities that could reasonably be expected to affect the entity's cash flows, its access to finance or cost of capital over the short, medium or long term

IFRS S2 applies to:

- (a) climate-related risks to which the entity is exposed, which are:
 - (i) climate-related physical risks; and
 - (ii) climate-related transition risks; and
- (b) climate-related opportunities available to the entity.

IFRS S2 sets out the requirements for disclosing information about an entity's climate-related risks and opportunities. In particular, IFRS S2 requires an entity to disclose information that enables users of general purpose financial reports to understand:

- (a) the governance processes, controls and procedures the entity uses to monitor, manage and oversee climate-related risks and opportunities;
- (b) the entity's strategy for managing climate-related risks and opportunities;
- (c) the processes the entity uses to identify, assess, prioritise and monitor climate-related risks and opportunities, including whether and how those processes are integrated into and inform the entity's overall risk management process; and
- (d) the entity's performance in relation to its climate-related risks and opportunities, including progress towards any climate-related targets it has set, and any targets it is required to meet by law or regulation.

Answer 2(b)

The listed entity shall maintain a functional website containing the following information about the listed entity: -

- (a) details of its business;
- (aa) composition of the Board;
- (b) financial information including:
 - (i) notice of meeting of the board of directors where financial results shall be discussed;
 - (ii) financial results, on the conclusion of the meeting of the board of directors where the financial results were approved;
 - (iii) complete copy of the annual report including balance sheet, profit and loss account, directors report, corporate governance report etc.
- (c) contact information of the designated officials of the listed entity who are responsible for assisting and handling investor grievances;
- (d) email address for grievance redressal and other relevant details;
- (e) name of the debenture trustees with full contact details;
- (f) the information, report, notices, call letters, circulars, proceedings, etc. concerning non-convertible redeemable preference shares or non-convertible debt securities;
- (g) all information and reports including compliance reports filed by the listed entity;
- (h) information with respect to the following:
 - (i) default by issuer to pay interest or redemption amount;
 - (ii) failure to create a charge on the assets;
- (i) all credit ratings obtained by the entity for all its listed non-convertible securities, updated immediately upon any revision in the ratings;
- (j) statements of deviation(s) or variation(s) as specified in sub-regulation (7) and sub-regulation (7A) of regulation 52 of these regulations;
- (k) annual return as provided under section 92 of the Companies Act, 2013 and the rules made thereunder.

The listed entities to whom regulations 15 to regulation 27 are applicable shall also make the following additional disclosures on their website:

- (a) composition of the various committees of the board of directors;
- (b) terms and conditions of appointment of independent directors;
- (c) code of conduct of the board of directors and senior management personnel;
- (d) details of establishment of vigil mechanism/whistle blower policy
- (e) criteria of making payments to non-executive directors, if the same has not been disclosed in the annual report;
- (f) secretarial compliance report as per sub-regulation (2) of regulation 24A of these regulations;
- (g) policy on dealing with related party transactions;
- (h) policy for determining 'material' subsidiaries;

(i) details of familiarization programmes imparted to independent directors including the following details:-

- (i) number of programmes attended by the independent directors (during the year and on a cumulative basis till date),
- (ii) number of hours spent by the independent directors in such programmes (during the year and on cumulative basis till date), and
- (iii) other relevant details.

The listed entity shall update any change in the content of its website within two working days from the date of such change in content.

Answer 2(c)

As the Company Secretary of LMN Ltd., I will advise that the Board Charter should include the following key sections to address the current governance challenges and enhance overall corporate governance practices:

1. **The Role of the Board:** Clearly define the responsibilities of the Board in overseeing the company's strategic direction, management performance, and ensuring accountability to stakeholders.
2. **The Role of the CEO and Chairman:** Separate and define the distinct roles of the CEO and Chairman to ensure a balance of power and prevent conflicts. The CEO is responsible for the day-to-day management of the company, while the Chairman leads the Board in its governance and oversight role.
3. **The Role of the Company Secretary:** Establish the Company Secretary's role in assisting the Board in its governance responsibilities, ensuring compliance with legal and regulatory requirements, and facilitating communication between the Board and Management.
4. **Directors' Code of Conduct:** Outline the ethical standards expected of Board members, ensuring that they act in the best interest of the company and adhere to laws and regulations.
5. **Conflicts of Interest:** Provide a framework for identifying, disclosing, and managing conflict of interest to prevent any undue influence on decision-making. This will help safeguard the integrity of the Board's decisions.
6. **Related Party Transactions:** Define the procedures for identifying, approving, and disclosing related party transactions to ensure transparency and avoiding conflict of interest.
7. **Board Member Qualifications and Skills:** Specify the qualifications, experience, and skills required of Board members to ensure a diverse and competent Board capable of making informed decisions.
8. **Board Meetings:** Establish guidelines for the scheduling, frequency, and conduct of Board meetings to ensure effective decision-making and governance.
9. **Delegation of Authority by the Board:** Define the powers delegated to Management and committees to ensure a clear division of responsibilities between the Board and the executive team.
10. **Role and Power of Committees:** Set out the authority, responsibilities, and operation of key Board committees (e.g., Audit, Risk, Remuneration) to ensure effective oversight of specific areas.
11. **Induction, Training, and Familiarisation of Directors:** Establish a framework for the induction of

new Directors and ongoing training to ensure they are equipped with the knowledge to fulfil their roles effectively.

12. **Board Evaluation:** Implement a process for regular evaluation of the Board's performance, including assessing the effectiveness of individual Directors, Committees, and the overall Board.
13. **Director's Liability Insurance:** Ensure that the Board members are adequately covered for any liabilities arising from their actions taken in good faith while performing their duties.
14. **Remuneration and Reimbursement of Expenses:** Outline the policy for non-executive Directors' remuneration and reimbursement of legitimate expenses incurred in the course of their duties.

OR (Alternate question to Q. No. 2)

Question 2A

- (i) What are the financial statements disclosure requirements for insurance companies as per the IDRA Regulations, 2002 ?
- (ii) "Promoter occupies an important position in the life of the Company, especially in the formative years." Who is officer in default under Section 2 of the Companies Act, 2013 ? What are his roles and liabilities according to SEBI (Issue of Capital and Disclosures Requirement) Regulations 2018 ?
- (iii) What are the key provisions under the Companies Act, 2013, with respect to Board Evaluation ?

(5 marks each)

Answer 2A(i)

The IRDAI (Preparation of Financial Statements and Auditors 'Report of Insurance Companies) Regulations, 2002, have prescribed certain disclosures in the financial statements it may be ensured by the Board that the information on the following, including the basis, methods and assumptions on which the information is prepared and the impact of any changes therein are also disclosed in the annual accounts-

- Quantitative and qualitative information on the insurance company's financial and operating ratios, viz. incurred claim, commission and expenses ratios
 - Actual solvency margin details vis-à-vis the required margin
 - Insurers engaged in life insurance business shall disclose persistency ratio of policies sold by them
 - Financial performance including growth rate and current financial position of the insurance company
 - Description of the risk management architecture
 - Details of number of claims intimated, disposed off and pending with details of duration
 - All pecuniary relationships or transactions of the Non-Executive Directors vis-à-vis the insurance company shall be disclosed in the Annual Report
 - Elements of remuneration package (including incentives) of MD & CEO and all other directors and Key Management Persons.
- Payments made to group entities from the Policyholders Funds
- Any other matters, which have material impact on the insurer's financial position.

Where finalization of annual accounts extends beyond 90 days from the end of the Financial Year, the status on disclosure in the financial statements required under this clause may be made within 15 days of adoption of annual accounts by the Board of Directors of the Insurers.

Answer 2A(ii)

Officer who is in Default :

Section 2(60) of the Act provides that an officer who is in Default with respect to any provision in the Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company namely:

- (i) whole-time director;
- (ii) key managerial personnel;
- (iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the all the director, if no direction is so specified;
- (iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
- (v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;
- (vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
- (vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer.

Under the ICDR Regulations:

- The Promoters have to ensure that they hold atleast 20% of the post issued capital after an Initial Public Offer and this 20% holding is locked in for a minimum period as prescribed.
- They must also disclose their shareholding every quarter and
- They must disclose and obtain shareholders' approval for all Related Party Transactions where they are a party.

Answer 2A(iii)

The key provisions in Companies Act with regard to Board evaluation are:

1. The Role of the Nominations and Remuneration Committee in performance evaluation of directors

Section 178 (2): The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall specify the manner for effective evaluation of performance of Board, its

committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance.

2. Independent Directors' role in performance evaluation of Boards, non-independent directors and Chairperson

Schedule IV [Part II (2)] : Independent directors are required to bring an objective view in the evaluation of the performance of board and management.

Schedule IV (Part VII) : The independent directors of the company shall hold at least one meeting in a financial year, without the attendance of non-independent directors and members of management.

All the independent directors of the company shall strive to be present at such meeting. The meeting shall:

- (a) review the performance of non-independent directors and the Board as a whole;
- (b) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;
- (c) assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

3. Performance evaluation of Independent Directors

Schedule IV Part V: Re appointment - The reappointment of the independent directors would be based on their report of performance evaluation.

Schedule IV Part VIII : Evaluation mechanism

The performance of the independent directors would have to be done by the entire Board excluding the director to be evaluated.

On the basis of the report of performance evaluation, the continuance or extension of the term of appointment of the independent director would be determined.

4. Inclusion of Performance evaluation in Board' Report

According to Rule 8 (4) of the Companies (Accounts) Rules, 2014 Every listed company and every other public company having a paid up share capital of twenty five crore rupees or more calculated at the end of the preceding financial year shall include, in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.

Question 3

- (a) What are the major technologies that are fueling the growth of Regulatory Technology (RegTech) Companies ?

(3 marks)

- (b) The National Foundation for Corporate Governance (NFCG) plays a significant role in promoting research and disseminating quality information on corporate governance. Discuss the internal governance structure of NFCG, highlighting its key components and how they contribute to the organization's mission of enhancing corporate governance practices.

(3 marks)

(c) What details are to be maintained by the Company in case of Issue of Sweat Equity Shares ?

(3 marks)

(d) How the orders are enforced in disciplinary proceedings under Rule 12 of NFRA Rules ?

(3 marks)

(e) Under the IRDA (Appointed Actuary) Regulations, 2000, the Appointed Actuary holds a pivotal role in maintaining the solvency and financial health of an insurance company. What are the matters upon which an Appointed Actuary should provide professional advice or certifications to the board ?

(3 marks)

Answer 3(a)

Major technologies supporting RegTech companies are:

- (a) Artificial Intelligence;
- (b) Cloud Computing;
- (c) Block Chain
- (d) Big Data
- (e) Data mining and analytics
- (f) Machine learning
- (g) Virtualization
- (h) Application Programming Interface (API)

Answer 3(b)

The internal governance structure of NFCG consists of:

- I. Governing Council
- II. Board of Trustees
- III. Executive Directorate

I. Governing Council: Governing Council of NFCG works at the apex level for policy making. It is chaired by Minister in-charge, Ministry of Corporate Affairs, Government of India. The members of the Governing Council are: -

- Secretary, Ministry of Corporate Affairs, Government of India - Vice Chairman of the Governing Council;
- Second Vice Chairman of the Governing Council (Industry);
- President, Confederation of Indian Industry (CII);
- President, Institute of Chartered Accountants of India (ICAI);
- President, Institute of Company Secretaries of India (ICSI);
- President, The Institute of Cost Accountants of India (ICAI-CMA);
- Director General, Confederation of Indian Industry (CII);
- Secretary, Institute of Chartered Accountants of India (ICAI);
- Secretary, Institute of Company Secretaries of India (ICSI);

- Secretary, The Institute of Cost Accountants of India (ICAI-CMA);
- Chairman, Indian Banks Association;
- Chairman, Insurance Regulatory and Development Authority;
- Chairman, Securities and Exchange Board of India;
- Secretary, Banking Division, Ministry of Finance;
- Secretary, Department of Public Enterprises;
- MD and CEO , National Stock Exchange (NSE);
- Director General & CEO, Indian Institute of Corporate Affairs (IICA);
- Eminent Industrialists (4).

II. Board of Trustees : Board of Trustees deal with the implementation of policies and programmes and laying down the procedure for the smooth functioning. It is chaired by Secretary, Ministry of Corporate Affairs, Government of India. The members of the Board of Trustees are: -

- Director General, Confederation of Indian Industry (CII);
- Secretary, Institute of Chartered Accountants of India (ICAI);
- Secretary, Institute of Company Secretaries of India (ICSI);
- Secretary, The Institute of Cost Accountants of India (ICAI-CMA);
- Representative, National Stock Exchange (NSE); and
- Director General & CEO, Indian Institute of Corporate Affairs (IICA).

III. Executive Directorate : The Executive Directorate provides the internal support to NFCG activities and implements the decisions of the Board of Trustees. The Executive Director is the Chief Executive Officer of NFCG. The Executive Directorate exercises such powers as may be delegated to it by the Board of Trustees to carry out such functions as may be entrusted to it by the Board. The Executive Director also functions as the Secretary of the Council and the Board and is supported by full time dedicated professional secretariat.

Answer 3(c)

Issue of Sweat Equity Share

Rule 8(13) of Companies (Share Capital and Debentures) Rules 2014 provides that the Board of Directors shall, inter alia, disclose in the Directors' Report for the year in which such shares are issued, the following details of issue of sweat equity shares namely:-

- (a) the class of director or employee to whom sweat equity shares were issued;
- (b) the class of shares issued as Sweat Equity Shares;
- (c) the number of sweat equity shares issued to the directors, key managerial personnel or other employees showing separately the number of such shares issued to them, if any, for consideration other than cash and the individual names of allottees holding one percent or more of the issued share capital;
- (d) the reasons or justification for the issue;
- (e) the principal terms and conditions for issue of sweat equity shares, including pricing formula;
- (f) the total number of shares arising as a result of issue of sweat equity shares;

- (g) the percentage of the sweat equity shares of the total post issued and paid-up share capital;
- (h) the consideration (including consideration other than cash) received or benefit accrued to the company from the issue of sweat equity shares;
- (i) the diluted Earnings Per Share (EPS) pursuant to issuance of sweat equity shares.

Answer 3(d)

Manner of enforcement of orders passed in disciplinary proceedings - Rule 12 of NFRA Rules:

1. Where the order passed under rule 11 relates to imposition of a monetary penalty on any auditor, the auditor shall deposit the amount of penalty with the Authority within thirty days of the order:

Provided that where the auditor prefers an appeal against the order of the Authority, it shall deposit ten percent of the amount of the monetary penalty with the Appellate Tribunal.
2. If, within thirty days of the order passed under rule 11, the auditor neither pays the penalty nor appeals against the order, the Authority shall, without prejudice to any other action, inform about such non-compliance to every company or body corporate (including those not covered by rule 3) in which the auditor is functioning as auditor and every such company or body corporate shall appoint a new auditor in accordance with the provisions of the Act.
3. Where the order passed under rule 11 imposes a penalty on the auditor or debars the auditor from practice, the order shall be sent to every company or body corporate in which the auditor is functioning as auditor.
4. Where the order passed under rule 11 debars the auditor from practice or the order under sub-rule (2) is passed, the order shall be sent to every company or body corporate (including those not covered by rule 3) in which the auditor is functioning as auditor and every such company or body corporate shall appoint a new auditor in accordance with the provisions of the Act.

Answer 3(e)

IRDAI has brought out detailed Regulations on Appointed Actuary vide IRDA (Appointed Actuary) Regulations, 2000, detailing the procedure for his appointment, qualifications, powers along with his duties and obligations. The Regulations also stipulate that prior approval of the Authority shall be taken for the appointment of the Appointed Actuary.

The Appointed Actuary shall provide professional advice or certification to the board with regard to:-

- Estimation of technical provisions in accordance with the valuation framework setup by the insurer
- Identification and estimation of material risks and appropriate management of the risks
- Financial condition testing
- Solvency margin requirements
- Appropriateness of premiums (and surrender value)
- Allocation of bonuses to with-profit insurance contracts
- Management of participating funds (including analysis of material effects caused by strategies and policies)
- Product design, risk mitigation (including reinsurance) and other related risk management roles.

While the areas of advice/certification listed above are with specific reference to life companies, the appointed actuaries in case of non-life insurance companies shall provide such advice/certification to the extent applicable. In order to facilitate the Appointed Actuary in discharging his/her responsibilities, he/ she shall at all times be provided access to the information as required.

PART-II

Question 4

- (a) What do you understand by Enterprise Risk Management ? What are its components ?
- (b) What is Risk Matrix ? Why is it useful ?
- (c) Sapphire Enterprises Pvt. Ltd. is in the process of annual review of its business strategy for the upcoming fiscal year. You are tasked with ensuring that strategic risks are effectively managed throughout the planning and execution process.

What are the steps in process of managing strategic risk within Sapphire Enterprises Pvt. Ltd.'s strategic planning framework to ensure that risks are identified, measured, and monitored for successful execution of the company's strategy ?

- (d) Risk identification plays a crucial role in ensuring the success of a project by minimizing the impact of potential risks and maximizing opportunities. Discuss the primary objective of the risk identification process in project management. Also, outline the key steps involved in implementing an effective risk identification process.

(5 marks each)

Answer 4(a)

Enterprise risk management provides a principle- based approach to help organization design and implement enterprise wide approaches to risk management. It is affected by entity's board of directors, management and other personnel applied in strategy setting across the enterprise, designed to identify potential events that may affect the entity and manage risk within its risk appetite. It consists of eight interrelated components. These are derived from the way management runs an enterprise and are integrated with the management process. These components are:

- *Internal Environment* – The internal environment encompasses the tone of an organization, and sets the basis for how risk is viewed and addressed by an entity's people, including risk management philosophy and risk appetite, integrity and ethical values, and the environment in which they operate.
- *Objective Setting* – Objectives must exist before management can identify potential events affecting their achievement. Enterprise risk management ensures that management has in place a process to set objectives and that the chosen objectives support and align with the entity's mission and are consistent with its risk appetite.
- *Event Identification* – Internal and external events affecting achievement of an entity's objectives must be identified, distinguishing between risks and opportunities.
- *Risk Assessment* – Risks are analysed, considering likelihood and impact, as a basis for determining how they should be managed. Risks are assessed on an inherent and a residual basis.
- *Risk Response* – Management selects risk responses – avoiding, accepting, reducing, or sharing risk – developing a set of actions to align risks with the entity's risk tolerances and risk appetite.

- *Control Activities* – Policies and procedures are established and implemented to help ensure the risk responses are effectively carried out.
- *Information and Communication* – Relevant information is identified, captured, and communicated in a form and timeframe that enable people to carry out their responsibilities. Effective communication also occurs in a broader sense, flowing down, across, and up the entity.
- *Monitoring* – The entirety of enterprise risk management is monitored and modifications made as necessary. Monitoring is accomplished through ongoing management activities, separate evaluations, or both.

Answer 4(b)

Risk Matrix is a matrix that is used during Risk & Control Self -Assessment (RCSA) activity to define the various levels of risk at each stage, activity, process and sub-process. Risk Matrix comprises of :

- 1) Impact analysis
- 2) Likelihood
- 3) Operating Effectiveness
- 4) Design Effectiveness

Ratings are assigned to all above categories, pre and post control environment. Based on the ratings a Gross/ Inherent Risk Level and Residual Risk level is determined (HIGH/MEDIUM/LOW), respectively.

In the event where Residual Risk level is HIGH and/ or a particular control environment is weak, these are mitigated with additional controls.

The Inherent and Residual Risks follow the RED-AMBER-GREEN colour-coding mapped to HIGH-MEDIUM- LOW Risks, respectively.

Usefulness:

Risk Matrix helps an organisation to prioritise its actions so that high impact risks that need to be managed are considered first. This provides maximum pay-off to the organisation from its risk management efforts.

Answer 4(c)

Managing strategic risk involves five steps which must be integrated within the strategic planning and execution process of Sapphire Enterprises P Ltd in order to be effective:

- 1. Define business strategy and objectives.** There are several frameworks that companies commonly use to plan out strategy, from simple SWOT analysis to the more nuanced and holistic Balanced Scorecard. The one thing that these frameworks have in common, however, is their failure to address risk. It is crucial, then, that companies take additional steps to integrate risk at the planning stage.
- 2. Establish key performance indicators (KPIs) to measure results.** The best KPIs offer hints as to the levers the company can pull to improve them. Thus, overall sales makes a poor KPI, while sales per customer lets the company drill down for answers.
- 3. Identify risks that can drive variability in performance.** These are the unknowns, such as future customer demand, that will determine results.
- 4. Establish key risk indicators (KRIs) and tolerance levels for critical risks.** Whereas KPIs measure

historical performance, KRIs are forward-looking leading indicators intended to anticipate potential roadblocks. Tolerance levels serve as triggers for action.

5. **Provide integrated reporting and monitoring.** Finally, companies must monitor results and KRIs on a continuous basis in order to mitigate risks or grasp unexpected opportunities as they arise.

Answer 4(d)

Objectives of Risk Identification:

The objective of the risk identification process is to ensure that all potential project risks are identified. The ultimate purpose of risk identification is to minimize the negative impact of project hiccups and threats, and to maximize the positive impact of project opportunities. Awareness of potential project risks reduces the number of surprises during the project delivery and thus, improves the chances of project success, allowing the team to meet the time, schedule and quality objectives of the project. Finally, the purpose of risk identification is to provide information for the next step of the risk management process.

Process of Risk Identification:

The process for risk identification starts by taking inventory of the potential project risks that can affect the project delivery. This step is crucial for efficient risk management throughout the project. The outputs of the risk identification are used as an input for risk analysis, and they reduce a project manager's uncertainty. Though the major work on risk identification is usually done in the beginning of a project, it is important to remember that risk identification is an iterative process; new risks can be identified throughout the project's life cycle as the result of internal or external changes to a project. The process needs to be rigorous to make sure that all possible risks are identified. An effective risk identification process should include the following steps:

1. **Creating a systematic process** - The risk identification process should begin with project objectives and success factors.
2. **Gathering information from various sources** - Reliable and high quality information is essential for effective risk management.
3. **Applying risk identification tools and techniques** - The choice of the best suitable techniques will depend on the types of risks and activities, as well as organizational maturity.
4. **Documenting the risks** - Identified risks should be documented in a risk register and a risk breakdown structure, along with its causes and consequences.
5. **Documenting the risk identification process** - To improve and ease the risk identification process for future projects, the approach, participants, and scope of the process should be recorded.
6. **Assessing the process' effectiveness** - To improve it for future use, the effectiveness of the chosen process should be critically assessed after the project is completed.

Part-III

Attempt all parts of either Q. No. 5 or Q. No. 5A

Question 5

- (a) A company's management is concerned about the safeguarding of assets and ensuring the reliability of financial information.

What do you mean by Accounting Controls ? What are the objectives of internal controls relating to accounting system ?

- (b) Discuss the importance of Information Technology (IT) in enhancing internal controls within an organization.

What are the circumstances under which manual elements should be used in internal control ?

- (c) "Corporate Citizenship is a mandate beyond law." Discuss.

- (d) What are the Key Drivers of Sustainability Reporting ?

(5 marks each)

Answer 5(a)

Accounting controls comprise the plan of organisation and all methods and procedures that are concerned mainly with and relate to, the safeguarding of assets and the reliability of the financial information. They generally include such controls as the system of authorisation and approval, separation of duties concerned with record keeping and accounting reports from those concerned with operations of assets custody, physical controls over assets and internal auditing

Internal control relating to accounting system aims at ensuring that:

- the transactions are executed in accordance with the management's authorisation;
- all transactions are promptly recorded in an appropriate manner to permit the preparation of financial information and to maintain accountability for assets;
- the access to assets is permitted only in accordance with the management authorisation;
- the assets are reviewed and verified at reasonable intervals and appropriate action is taken with regard to the variances.

It can safely be said that scope of internal control is much wider than that of accounting controls. Thus, internal checks, internal audit, quantitative controls, budgetary controls etc. can be said to be a part of the accounting controls, in so far as they deal with quantitative aspects. On a wider footing, accounting controls, operational controls, policy planning/review, reporting etc. can be said to be a part of internal control.

Answer 5(b)

An entity's mix of manual and automated elements in internal control varies with the nature and complexity of the entity's use of IT.

Generally, IT benefits an entity's internal control by enabling an entity to:

- i. Consistently apply predefined business rules and perform complex calculations in processing large volumes of transactions or data;
- ii. Enhance the timeliness, availability, and accuracy of information;
- iii. Facilitate the additional analysis of information;
- iv. Enhance the ability to monitor the performance of the entity's activities and its policies and procedures;
- v. Reduce the risk that controls will be circumvented; and
- vi. Enhance the ability to achieve effective segregation of duties by implementing security controls in applications, databases, and operating systems.

Manual elements in internal control may be more suitable where judgment and discretion are required such as for the following circumstances:

- i. Large, unusual or non-recurring transactions.
- ii. Circumstances where errors are difficult to define, anticipate or predict.
- iii. In changing circumstances that require a control response outside the scope of an existing automated control.
- iv. In monitoring the effectiveness of automated controls.

Answer 5(c)

Corporate Citizenship is a commitment to improve community well-being through voluntary business practices and contribution of corporate resources leading to sustainable growth. It is a dynamic relationship between the business and the community complementing and supplementing each other.

As a good **corporate citizen**, companies are required to focus on the following key aspects:

1. **Absolute Value Creation for the Society:** Organizations should set their goal towards the creation of absolute value for the society. Once it is ensured, a corporate never looks back and its sustainability in the long run is built up.
2. **Ethical Corporate Practices:** In the short run, enterprise can gain through non-ethical practices. However, those cannot be sustained in the long run. Society denies accepting such products or services.
3. **Worth of the Earth through Environmental Protection:** Resources which are not ubiquitous and have economic and social value should be preserved for a long- term use and be priced properly after considering environmental and social costs.
4. **Equitable Business Practices:** Corporates should not indulge themselves in unfair means and should create candid business practices, ensuring healthy competition and fairtrade practices.
5. **Corporate Social Responsibility:** As a Corporate citizen, every corporate is duty bound to its society wherein it operates and serves. Although there are no hard and fast rules, CSR activities need to be clubbed and integrated into the business model of the company.
6. **Innovate new technology/process/system to achieve eco-efficiency:** Innovation is the key to success. Risks and crisis can be eliminated through innovation. Learning and innovative enterprise gets a cutting edge over others. These innovative processes bring sustainability if developments are aimed at satisfying human needs, and ensure quality of life, while progressively reducing ecological impact and resource intensity to a level at least in line with earth's estimated carrying capacity.
7. **Creating Market for All:** Monopoly, unjustified subsidies, prices not reflecting real economic, social environmental cost, etc. are hindrances to the sustainability of a business. Simultaneously, a corporate has to build up its products and services in such a way so as to cater to all segments of customers/ consumers. Customer confidence is the essence of corporate success.
8. **Switching over from the Stakeholders Dialogue to holistic Partnership:** A business enterprise can advance its activities very positively if it makes all the stakeholders' partner in its progress. It not only builds confidence of its stakeholders, but also helps the management to steer the business under a very dynamic and flexible system. This approach offers business,

government and other stakeholders of the society to build up an alliance to bring about common solutions to the common concerns faced by all.

9. **Compliance of Statutes:** Compliance of statutes, rules and regulations and standards set by various bodies ensure clinical check-up of a corporate and confers societal license upon it to run and operate its business in the society.

Answer 5(d)

Some of the key drivers of sustainability reporting are-

- **Regulations:** Governments, at most levels have stepped up the pressure on corporations to measure the impact of their operations on the environment. Legislation is becoming more innovative and is covering an ever-wider range of activities. The most notable shift has been from voluntary to mandatory sustainability monitoring and reporting.
- **Customers:** Public opinion and consumer preferences are a more abstract but powerful factor that exerts considerable influence on companies, particularly those that are consumer oriented. Customers significantly influence a company's reputation through their purchasing choices and brand.
- **Loyalty:** This factor has led the firms to provide much more information about the products they produce, the suppliers who produce them, and the product's environmental impact starting from creation to disposal.
- **NGO's and the media:** Public reaction comes not just from customers but from NGOs and the media, who shape public opinion. Advocacy organisations, if ignored or slighted, can damage brand value.
- **Employees:** Those who work for a company bring particular pressure to bear on how their employers behave; they, too, are concerned citizens beyond their corporate roles.
- **Peer pressure from other companies:** Each company is part of an industry, with the peer pressures and alliances that go along with it. Matching industry standards for sustainability reporting can be a factor; particularly for those who operate in the same supply chain and have environmental or social standards they expect of their partners.
- **Companies themselves:** Corporations, as public citizens, feel their own pressure to create a credible sustainability policy, with performance measures to back it up, but with an eye on the bottom line as well. Increasingly, stakeholders are demanding explicit sustainability reporting strategies and a proof of the results.
- **Investors:** Increasingly, investors want to satisfy themselves that companies they have targeted have responsible, sustainable, long-term business approaches. Institutional investors and stock exchange CEOs, for example, have moved to request increased sustainability reporting from listed companies, and environmental, social and corporate governance indices have been established such as the Dow Jones Sustainability Index.

OR (Alternate question to Q. No. 5)

Question 5A

- (i) Financial reporting is integral to corporate governance and effective stakeholder communication. Explain the key importance of financial reporting for an organization, focusing on its role for various stakeholders. Furthermore, critically analyse the limitations of the current financial reporting model, particularly in terms of providing forward- looking and relevant information for decision-making.

(5 marks)

- (ii) Integrated reporting has gained significant importance in modern corporate governance. Explain why businesses need to adopt integrated reporting practices. Also, discuss the key benefits that an organization can derive from implementing integrated re-reporting in terms of transparency, stakeholder communication, and long-term value creation.

(5 marks)

- (iii) Discuss the initiatives for Integrated Reporting in India.

(5 marks)

- (iv) What are the classification and techniques of Internal Control ?

(5 marks)

Answer 5A(i)

Importance of Financial Reporting: The importance of financial reporting cannot be over emphasized. It is required by each and every stakeholder for multiple reasons and purposes. The following points highlight the importance of financial reporting –

1. It helps organisations to comply with various statutes and regulatory requirements. The organisations are required to file financial statements to the ROC, Income tax authorities and other Government Agencies. In case of listed companies, quarterly as well as annual results are required to be filed to stock exchanges and published.
2. It facilitates statutory audit. The statutory auditors are required to audit the financial statements of an organisation to express their opinion.
3. Financial Reports form the backbone of financial planning, analysis, bench marking and decision making. The reports are used for above purposes by various stakeholders.
4. Financial reporting helps organisations to raise capital both domestic as well as overseas.
5. On the basis of financials, the public at large can analyse the performance of the organisation as well as of its management.
6. For the purpose of bidding for tenders, labour contracts, government supplies etc., organisations are required to furnish their financial reports & statements.
7. Financial reporting also facilitates an introspection of the organization. It takes stock of various affairs which would have been missed in the absence of any financial system.

Limitations of Financial Reporting:

The current financial reporting model was developed in the 1930's for an industrial world. In general, the model provides a backwards-looking review of performance and does not provide enough relevant information for decision-making today.

The financial reporting model is like "looking in the rear-view mirror," when in fact the road ahead is very turbulent and there are huge impacts on the company, both societal and environmental.

It is not necessarily the volume of information, but the lack of a comprehensive story, which is where improvements in corporate reporting are needed. Investors expect information about:

- (a) Business model and strategy,
- (b) Intangible factors and sustainability (i.e. economic, environmental, social) commitments,
- (c) Impacts and performance that affect a company's value today and its ability to create value in the future,

- (d) Key aspects of corporate governance,
- (e) Internal controls,
- (f) Human rights / diversity practices and policies,
- (g) Key financial ratios.

Answer 5A(ii)

Integrated Reporting is needed because in the wake of the global financial crisis, the need to promote financial stability and sustainable development by better linking investment decisions, corporate behaviour and reporting has become increasingly important. Both regulators and companies now realise the need for a fundamental change in reporting where the focus is not on the financial capital, but on demonstrating the value created by an entity while operating within its economic, social and environmental system.

The key benefits of adopting integrated reporting are:

- **Improved decision-making:** Management teams have found that integrated reporting provides greater insights into factors driving business performance. It has helped them better understand and connect the disparate sources and drivers of long-term value to enable better strategy formulation, decision-making and implementation through their business model.
- **Improved reputation and stakeholder relationships:** Disclosure of key risks and opportunities enable investors to assess their short, medium and long-term impact. There is now growing evidence to suggest that stocks of companies that meet high standards for ESG factors are likely to outperform the market.
- **More efficient reporting:** Integrated Reporting has led to companies witnessing improved data quality by applying metrics for financial and non-financial performance. This action of improved data collection has led to a more efficient reporting process for companies.
- **Employee engagement:** As organisations begin integrating aspects of social development and governance within their business models, its employees feel more motivated and supportive towards their tasks and responsibilities.
- **Improved gross margins:** It has been highlighted that any financial benefit of adopting integrated reporting may take time to realise as investors and other stakeholders assess the impact of the company and its alignment of ESG related risks and opportunities with its business model and strategies. Further, organisations have been able to identify cost savings by analysing financial and non-financial metrics together.

Answer 5A(iii)

SEBI initiated the first steps in Integrated Reporting by requiring the submission of a Business Responsibility Report by certain listed entities under Regulation 34(2) of the LODR Regulations. The BRR along with the Financial Reporting was to provide the stakeholders with a comprehensive view of the economic, social and environmental performance of the Company.

The Business Responsibility Report has now been changed to Business Responsibility and Sustainability Report mandated for the top 1000 listed companies by market capitalisation.

Today an investor seeks both financial as well as non-financial information to take a well-informed investment decision. An integrated report aims to provide a concise communication about how

an organisation's strategy, governance, performance and prospects create value over time. The purpose of integrated reporting is to provide shareholders and interested stakeholders with relevant information that is useful for making investment decisions.

Also regulation 4(1)(d) of SEBI LODR states "the listed entity shall provide adequate and timely information to recognised stock exchange(s) and investors". IOSCO Principle 16 states "there should be full, accurate and timely disclosure of financial results, risks and other information that is material to investors' decisions."

SEBI has in its circular of 6th February 2017 provided the following on Integrated Reporting:

- (a) Integrated Reporting may be adopted on a voluntary basis from the financial year 2017-18 by top 500 companies which are required to prepare BRR.
- (b) The information related to Integrated Reporting may be provided in the annual report separately or by incorporating in Management Discussion & Analysis or by preparing a separate report (annual report prepared as per IR framework).
- (c) In case the company has already provided the relevant information in any other report prepared in accordance with national/international requirement / framework, it may provide appropriate reference to the same in its Integrated Report so as to avoid duplication of information.
- (d) As a green initiative, the companies may host the Integrated Report on their website and provide appropriate reference to the same in their Annual Report.

Answer 5A(iv)

The nature of internal control is to establish preventive or control measures in an organization to provide reasonable assurance about the achievement of an entity's objectives. It follows the principle that key activities in the organisations should be processed by one person and be checked by another independent person. This prevents the occurrence of fraud and so deliberate attempts made by any insider may be withheld at once.

Internal control can broadly be classified into two categories viz.:

1. Accounting controls/financial controls, and
2. Administrative controls.

(1) Accounting controls

Accounting controls comprise the plan of organisation and all methods and procedures that are concerned mainly with and relate to, the safeguarding of assets and the reliability of the financial information. They generally include such controls as the system of authorisation and approval, separation of duties concerned with record keeping and accounting reports from those concerned with operations of assets custody, physical controls over assets and internal auditing.

Examples of each are (i) maintaining inventory is an accounting control whereas (ii) recording of visits by a salesman is the administrative control.

Internal control relating to accounting system aims at ensuring that:

- the transactions are executed in accordance with the management's authorisation;
- all transactions are promptly recorded in an appropriate manner to permit the preparation of financial information and to maintain accountability for assets;
- the access to assets is permitted only in accordance with the management authorisation;
- the assets are reviewed and verified at reasonable intervals and appropriate action is taken with regard to the variances.

It can safely be said that scope of internal control is much wider than that of accounting controls. Thus, internal checks, internal audit, quantitative controls, budgetary controls etc. can be said to be a part of the accounting controls, in so far as they deal with quantitative aspects. On a wider footing, accounting controls, operational controls, policy planning/review, reporting etc. can be said to be a part of internal control.

(2) Administrative Controls

A number of controls falling under operational controls can also be administrative controls. Examples of operational controls are: quality control, works standards, periodic reporting, policy appraisal etc. Administrative controls are very wide in their scope. They include all other managerial controls concerned with decision-making process. They are concerned with the authorisation of transactions and include anything from plan of organisation to procedures, record keeping, distribution of authority and the process of decision-making. They include controls such as time and motion studies, quality control through inspection, performance budgeting, responsibility accounting and performance evaluation etc. Administrative controls have an indirect relationship with financial records and the auditor may evaluate only those administrative controls which have a bearing on the financial records.

Techniques of internal control are as follows:

- There should be clear division of the work.
- Segregation of the work should be in such a manner that the work done by one person is the beginning of the work for another person.
- There should be clarity of the responsibility.
- The work flow process be documented or standardized so that the staff may perform the work as suggested in the work flow chart.
- No single persons should be allowed to have access or control over any important business operation.
- There should be job rotation of the staff duties periodically.
- Staff should be asked to go on mandatory leave periodically so that other person may come to know if someone is playing foul with the system.
- Persons having the charge of the important assets should not be allowed to have access to the books of accounts.
- Periodical inspection of the physical assets be carried out to ensure its physical existence as well in good working condition.
- The valuable items like cash and others, by physically inspected and the periodicity should be at irregular intervals, so that the person under whose charge the assets are, cannot know in advance, when the inspection will take place and manage the affairs.

PART-IV

Question 6

(a) What are the four fundamental principles of Business Ethics ? Highlight benefits of Business Ethics.

(6 marks)

(b) What are the Contemporary Global Trends on ESG ? Highlight key points.

(4 marks)

Answer 6(a)**Four Fundamental Ethical Principles:****1. The Principle of Respect for autonomy**

Autonomy is Latin for “self-rule” We have an obligation to respect the autonomy of other persons, which is to respect the decisions made by other people concerning their own lives. This is also called the principle of human dignity. It gives us a negative duty not to interfere with the decisions of competent adults, and a positive duty to empower others for whom we’re responsible. Corollary principles: honesty in our dealings with others & obligation to keep promises.

2. The Principle of Beneficence

We have an obligation to bring about good in all our actions. Corollary Principle: We must take positive steps to prevent harm. However, adopting this corollary principle frequently places us in direct conflict with respecting the autonomy of other persons.

3. The Principle of non-maleficence

(It is not “non-maleficence,” which is a technical legal term, & it is not “non-malevolence,” which means that one did not intend to harm.) We have an obligation not to harm others: Corollary Principles: Where harm cannot be avoided, we are obligated to minimize the harm we do. Do not increase the risk of harm to others. It is wrong to waste resources that could be used for good. Combining beneficence and non-maleficence: Each action must produce more good than harm.

4. The Principle of justice

We have an obligation to provide others with whatever they are owed or deserve. In public life, we have an obligation to treat all people equally, fairly, and impartially. Combining beneficence and justice: We are obligated to work for the benefit of those who are unfairly treated.

Importance of Business Ethics

- i) Business is existing because of society: Philip Kotler had said “we sell products in the society not in the market” it is the society and the values of the people which creates desire.
- ii) Business relates to people and ethics are essential to people.
- iii) Ethical practices would result in social contribution.
- iv) Business malpractices can adversely affect all stakeholders, apart from Govt., environment etc.
- v) Business will have positive effects on customers who will have the trust on the brand, either product or service. There will not be any trust unless the company follows ethical standards.
- vi) Cultivates strong team work & productivity among employees resulting to enhanced employee growth.
- vii) Helps to build a strong public image.

Answer 6(b)

As ESG investing accelerates in demand, several key trends are emerging – from climate change to social unrest. The coronavirus pandemic, in particular, has intensified discussions about the interconnectedness of sustainability and the financial system.

Following are the Global trends for ESG predicted :

1. Climate Change Risk
2. Diversity, Equity & Inclusion (DE&I)
3. Convergence of Sustainability Reporting Standards
4. Human Capital Management
5. Return of Activism and Increased Capital Markets Activity
6. Virtual Board & Shareholder Meetings: Here to Stay.

ESG issues continue to rise up the agenda for corporates, regulators and investors, with the sustained focus on climate change and other environment (E) issues continuing but with an increasing focus on social (S) factors driven in part by the impact of the COVID-19 pandemic.

ADVANCE TAX LAW

MODULE 1 PAPER 2

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

PART- I

Question 1

- (a) Mr. Kunal is an employee in Vijyanta and Sons, working at its Mumbai (Maharashtra) office. Mr. Kunal is unregistered under GST law. His family is located in Agra, Uttar Pradesh. His son requires a laptop for his school project on urgent basis. Therefore, Mr. Kunal places an order on BBazar.in (an e-commerce platform) for supply of a laptop of latest configuration for his son, which is to be delivered at his residential address located in Agra, Uttar Pradesh.

Mr. Kunal, while placing the order on the e-commerce platform, provides the billing address of his apartment located in Mumbai Maharashtra. You are required to determine the place of supply of laptop in the given case in the context of CGST Act, 2017.

(5 marks)

- (b) Kishore, a registered service provider entered into an agreement of provision of service with one of his clients. The full payment was received in advance by cheque on 15.09.2024 which was entered in the books on 16.09.2024 and credited in bank on 21.09.2024. The service was completed on 21.10.2024. However invoice for the same was raised on 25.11.2024.

Meanwhile with effect from 13.10.2024 GST rate was increased from 5% to 12%. Kishore claim that since he received the payment before rate change and also raised invoice in specified time hence, he is liable for GST @ 5% only.

- (i) Examine the correctness of Kishore's contention and determine the Time of supply and applicable rate as per the provision of CGST Act, 2017.
- (ii) Would your answer be different in (i) above, if invoice for the same was raised on 25.09.2024 instead of 25.11.2024 ?

(5 marks)

- (c) With reference to GST law, determine the place of supply with reasons in the following independent circumstances :

- (i) Ms. Rani of Delhi visited Jaipur Law University (Rajasthan) and paid her college fees by purchasing a demand draft from a bank located in the University campus. Ms. Rani did not have any account with the bank.
- (ii) ABH Machine Ltd., registered in the State of Karnataka, supplied a machinery to BHY Ltd., registered in the State of Rajasthan. However, this machinery was assembled and installed at the wind mill of BHY Ltd., which was located in the State of Gujarat.

(5 marks)

- (d) Mr. Vikas, lives in Jaipur have submitted that he is an individual not engaged in any business. His receipts are only from savings, personal loans and advances and deposits, which are reflected in the Income Tax Returns.

Vikas has further submitted that his estimated receipts for the F.Y. 2024-25 is likely to be ₹ 20,21,000 which includes,

- (i) Rent receipts : ₹ 9,93,000
- (ii) Bank interest : ₹ 3,000
- (iii) Interest on PPF deposit : ₹ 2,70,000 and
- (iv) Interest on Personal Loans and Advances : ₹ 7,55,000.

Advise, whether Vikas is required to get himself registered under GST Act, 2017.

(5 marks)

Answer 1(a)

As per the provisions of section 10(1)(ca) of the IGST Act, 2017, where the supply of goods is made to an unregistered person, the place of supply would be the location as per the address of said person recorded in the invoice and the location of the supplier where the address of the said person is not recorded in the invoice.

Further, as per explanation to the said clause, recording the name of the State of the said unregistered person on the invoice shall be deemed to be the recording of the address of the said person.

Accordingly, it is clarified vide Circular No. 209/3/2024 GST dated 26.06.2024 that in the cases involving supply of goods to an unregistered person, where the address of delivery of goods recorded on the invoice is different from the billing address of the said unregistered person on the invoice, the place of supply of goods in accordance with the provisions of section 10(1)(ca) of the IGST Act, 2017, shall be the address of delivery of goods recorded on the invoice in the present case where the delivery address is located.

Also, in such cases involving supply of goods to an unregistered person, where the billing address and delivery address are different, the supplier may record the delivery address as the address of the recipient on the invoice for the purpose of determination the place of supply of the said supply of goods.

Thus, the place of supply of laptop in the given case is Agra, Uttar Pradesh.

Answer 1(b)

As per section 14(b) of CGST Act, 2017, in case the goods or services or both have been supplied after the change in rate of tax,

- i. where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment; or
- ii. where the invoice has been issued and payment is received before the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or
- iii. where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax, the time of supply shall be the date of issue of invoice

In the present facts, the payment is received on 16.9.2024 i.e. before the change of rate of tax but completion of supply of service occurred on 21.10.2024 and issue of invoice has occurred on 25.11.2024 both after the change of rate of tax. Hence considering the above provision section

14(b)(iii) time of supply shall be date of invoice i.e., 25.11.2024. Hence, Mr. Kishore's contention is incorrect and applicable rate will be 12%

In this case, payment date will be considered as 16.09.2024 because it is earlier than credit in bank. If payment is not credited in bank within 4 working days after change in rate, then we have to consider the date of credit in bank account as date of payment, but here payment already credited in bank account before change in rate so normal provision will be applicable.

Accordingly, time of supply shall be the earlier of the date of receipt of payment i.e. 16.09.2024 or date of issue of invoice i.e. 25.09.2024. So, the time of supply will be 16.09.2024 and rate will be 5%.

Answer 1(c)

- i. Section 12(12) of the IGST Act, 2017 provides that the place of supply of banking and other financial services, including stock broking services to any person is the location of the recipient of services in the records of the supplier of services.

However, if the location of recipient of services is not available in the records of the supplier, the place of supply is the location of the supplier of services.

Therefore, in the present case, since the location of recipient is not available in the records of the supplier, the place of supply is the location of the supplier of services, i.e., Jaipur (Rajasthan).

- ii. Section 10(1)(d) of the IGST Act, 2017 provides that if the supply involves goods which are to be installed or assembled at site, the place of supply shall be the place of such installation or assembly.

Thus, in this case, the place of supply shall be the site of assembly of machine, i.e., the state of Gujarat.

Answer 1(d)

Notification No. 12/2017-Central Tax (Rate) and Notification No. 9/2017-Integrated Tax (Rate), both dated 28-6-2017, as amended, provides a list of services exempted from payment of Central Tax on Intra-State supply and Integrated Tax on Inter-State supply. Entry 27(a) of the Notification No. 12/2017 and Entry 28(a) of the Notification No. 9/2017 relates to services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest.

The services regarding interest income are covered under the above Notification. Therefore, such services are exempted from payment of GST and the individual is not required to discharge GST on the activity of providing services by way of extending deposits, loans or advances where the consideration is represented by way of interest. Therefore, in given case GST is not leviable on Interest Income earned by the Mr. Vikas.

In the given case Mr. Vikas is an individual with an annual turnover of more than Rs. 20 Lakh. Since this income is interest-related, the Interest is exempt from GST. However, the Mr. Vikas also supplies services of "Renting of immovable property" along with activity of providing services by way of extending deposits, loans or advances where the consideration is represented by way of interest. His turnover from the rent income is Rs. 9.93 Lakh and this transaction ("Renting of immovable property") is chargeable to GST. However, his taxable turnover is only Rs. 9.93 Lakh. Going by the definition of "aggregate turnover" under section 2(6) of the CGST Act, 2017, Mr. Vikas is required to consider the value of both the taxable supply, i.e., "Renting of immovable property" and exempted supply of service provided by way of extending deposits, loans or advances for which they earned interest income, to arrive at "Aggregate Turnover" to determine the threshold limit for the purpose of obtaining registration under the GST Act.

In view of the above, we conclude that the Mr. Vikas is required to aggregate the value of exempted interest income earned by way of extending deposits in PPF & Bank Saving accounts and loans and advances given to his family/friends along with the value of the taxable supply, i.e., "Renting of immovable property" for the purpose of calculating the threshold limit of Rs. 20.00 Lakh for obtaining registration under GST law.

Note: Aggregate Turnover threshold limit for registration is considered to be ₹20 lakhs during a financial year as per section 22 of the CGST Act given that the supplier is engaged exclusively in supply of services and; he is in the state of Rajasthan.

In view of above, as the aggregate value of turnover of Mr. Vikas is Rs. 20,21,000 which is more than the threshold limit of Rs. 20.00 Lakh for obtaining registration under GST law, he is required to get himself registered under GST Law.

(Attempt all parts of either Q. No. 2 or 2A)

Question 2

- (a) With reference to latest amendment, Examine the implications of GST on supply of food and beverages at cinema halls in the context of CGST Act, 2017.

(5 marks)

- (b) Ganesh Medical Centre, a Multi-specialty hospital, is registered under GST law at New Delhi. It hires senior doctors and consultants independently, without entering into any employer-employee agreement with them. These doctors and consultants provide consultancy to the in-patients who are admitted to the hospital for treatment, without there being any contract with such patients. In return, they are paid the consultancy charges by Ganesh Medical Centre. However, the money actually charged by Ganesh Medical Centre from the in-patients is higher than the consultancy charges paid to the hired doctors and consultants. The difference in the amount is retained by the hospital, i.e., retention money, includes charges for providing ancillary services like nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure, etc.

Further, Ganesh Medical Centre has its own canteen which supplies food as advised by the doctor/nutritionists to the in-patients as well as to other patients (who are not admitted) or their attendants or visitors.

Details for the Month of October, 2024 are as follows :

S. No.	Particulars	Amount (₹)
(i)	Consultancy Charges paid to doctors	18,00,000
(ii)	Amount Charged from patients for point (i) above	16,00,000
(iii)	Amount Charged for Canteen from in-patients as advised by the doctor/nutritionists	2,50,000
(iv)	Amount Charged for Canteen for attendant (up to one person) of in-patients.	5,40,000
(v)	Amount Charged for Canteen from patients (Not admitted)	60,000

Neither hospital nor doctors paid any GST on the above transaction and all of the above amount are exclusive of taxes if any.

You are required to calculate the amount of Taxable value (if any) for the month of October 2024 as per GST laws, on which GST is to be paid either by hospital or by the doctors.

(5 marks)

- (c) Suresh Sharma of Rajasthan, want to apply for registration as Casual Taxable Person (CTP) for supply in an exhibition to be held in the state of Gujarat for 195 days. With reference to provision of GST law, suggest suitable course of action to Suresh Sharma.

(5 marks)

- (d) ABC Ltd., the owner of the goods, sends goods through Rajat Transport Agency from Jodhpur to Delhi valuing ₹ 6,00,000 which is exempted under the GST law. During the transit, the proper officer has intercepted and found contravention of GST provisions. He detained the goods and the conveyance.

Determine the penalty payable under section 129 of CGST Act, 2017 for release of detained goods :

- (i) If ABC Ltd. comes forward for payment of tax and penalty,
- (ii) If ABC Ltd. does not come forward for payment of tax and penalty.
- (iii) What is the time limit within which such penalty amount is required to be deposited assuming goods are other than perishable nature ?

(5 marks)

Answer 2(a)

The applicability of GST on supply of food and beverages in cinema halls has been clarified by the CBIC vide Circular No. 201/13/2023 GST dated 01.08.2023.

It explains that eating joint is a wide term which includes refreshment or eating stalls/ kiosks/ counters or restaurant at a cinema also.

The cinema operator may run refreshment or eating stalls/ kiosks/ counters or restaurant at cinema hall themselves or they may give it on contract to a third party. The customer may like to avail the services supplied by these refreshment/snack counters or choose not to avail these services.

Further, the cinema operator can also install vending machines, or supply any other recreational service such as through coin-operated machines etc. which a customer may or may not avail.

Accordingly, it is hereby clarified that:

- (i) supply of food or beverages in a cinema hall is taxable as 'restaurant service' as long as:
 - a. the food or beverages are supplied by way of or as part of a service, and
 - b. supplied independent of the cinema exhibition service.
- (ii) where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.

Answer 2(b)

As per Notification No. 12/2017 CT (R) dated 28.06.2017, services by way of health care services by a clinical establishment, an authorised medical practitioner or para-medics are exempt from GST.

Circular No. 32/06/2018 GST dated 12.02.2018 has clarified that it can be inferred that hospitals also provide healthcare services. The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients is exempt from GST.

The circular also clarified that services provided by senior doctors/ consultants/ technicians hired by the hospitals, whether employees or not, are also healthcare services exempt from GST. Hence, services provided by the senior doctors and consultants hired by Ganesh Medical Centre, being healthcare services, are also exempt from GST.

The circular further explained that food supplied by the hospital canteen to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare services and is not separately taxable. Moreover, Health Care Services are exempted from GST as per Notification No.12/2017-CT. Thus, it is exempt from GST. However, other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable. In view of the same, GST is not applicable on the food supplied from canteen to in-patients as advised by doctors/nutritionists while other supplies of food by it to patients (not admitted) or their attendants/visitors are taxable.

Based on the legal position as clarified above, the computation of taxable value is as below

Computation of taxable Value for Doctors hired by Ganesh Medical Center

S. No	Particulars	Amount. (Rs.)
(i)	Consultancy Charges paid to doctors	Nil

Computation of taxable Value for Ganesh Medical Center

S. No.	Particulars	Amount. (Rs.)
(ii)	Amount charged from patients for point (i) above	Nil
(iii)	Amount Charged for Canteen from in-patients as advised by the doctor/nutritionists	Nil
(iv)	Amount Charged for Canteen for attendant (up to one person) of in-patients.	5,40,000
(v)	Amount Charged for Canteen from patients (Not admitted)	60,000
	Total	6,00,000

Answer 2(c)

As per section 27 of the Central Goods and Services Tax Act, 2017, period of operation by causal taxable person is ninety days with provision for extension of same by the proper officer for a further period not exceeding ninety days hence total period should not exceed 180 days

The clarification on this matter given in Circular No. 71/45/2018-GST dated 26th October, 2018.

It is clarified that in case of long running exhibitions (for a period more than 180 days), the taxable

person cannot be treated as a Casual Taxable Person and thus such person would be required to obtain registration as a normal taxable person.

While applying for normal registration the said person should upload a copy of the allotment letter granting him permission to use the premises for the exhibition and the allotment letter/consent letter shall be treated as the proper document as a proof for his place of business.

In such cases he would not be required to pay advance tax for the purpose of registration.

He can surrender such registration once the exhibition is over.

Answer 2(d)

- (i) If ABC comes forward for payment of tax and penalty: Where owner of the goods comes forward for releases of goods, penalty equivalent to 2% of value of goods or Rs. 25,000 whichever is less is required to be paid. Accordingly, Rs. 12,000 (lower of 2% of Rs. 6,00,000 or Rs.25,000) is to paid as penalty for release of goods.
- (ii) If ABC does not come forward for payment of tax and penalty: Where owner of the goods does not come forward for release of goods, penalty equivalent to 5% of value of goods or Rs. 25,000 whichever is less, is required to be paid. Accordingly, Rs. 25,000 (lower of 5% of Rs. 6,00,000 or Rs. 25,000) is required to be paid as penalty for release of goods.
- (iii) Penalty amount is required to be deposited within 15 days of the passing of order under section 129 of the CGST Act, 2017 in respect of goods other than perishable or hazardous goods. In case of perishable or hazardous goods, the period of 15 days can be reduced.

(Or Alternative to Question No. 2)

Question 2A

- (i) State the following independent services are taxable or exempted under the provision of GST law :
 - (i) Pure labour service of construction of single residential unit which is forming part of a residential complex.
 - (ii) Goods transport agency service provided for transportation of goods on a consignment transported in a single carriage does not exceed ₹ 1,500.
 - (iii) Service by way of fumigation in a warehouse of agricultural produce.
 - (iv) Accommodation service provided by a hotel for lodging purpose having value of supply of a unit of accommodation of ₹ 900 per day.
 - (v) Renting of a residential flat given to a registered proprietary concern for use as guest house for its various salesmen.

(5 marks)

- (ii) QRT Manufacturing Ltd, a registered supplier of Karnataka, is engaged in manufacturing and supply of taxable goods.

Given below are the details of the turnover and applicable GST rates of the final products manufactured by QRT manufacturing Ltd. as also the input tax credit (ITC) availed on inputs used in manufacture of each of the final products and GST rates applicable on the same, during a tax period :

Products	Turnover (Excluding GST (₹))	Output GST Rates	ITC availed on input exclusively used (₹)	Input GST Rates
P	14,00,000	5%	1,10,000	12%
Q	13,00,000	5%	1,08,000	18%
R	9,00,000	12%	94,000	12%

Additional Information :

- (i) GST paid ₹ 42,000. (@ 12% on ₹ 3,50,000) for Capital Goods 'A' exclusive used for product P.
- (ii) GST Paid ₹ 54,000 (@ 18% on ₹ 3,00,000) on Input Services exclusive used for product P.

Determine the maximum amount of refund of the unutilised input tax credit that QRT manufacturing Ltd. is eligible to claim under section 54(3) (ii) of the CGST Act, 2017 (i.e., due to inverted duty structure) read with rule 89(5) of CGST Rules, 2017.

Note : - (1) Product Q is notified as a product, in respect of which no refund of unutilised input tax credit shall be allowed under said section.

(2) No refund claimed under rule 89 (4A) or 89 (4B) of CGST Rules, 2017.

(3) All the amount of ITC reflecting in GSTR 2A of company.

(5 marks)

- (iii) Mr. Raju, an USA citizen booked a package tour with "Four Seasons Travel Agency".

The package includes airfare, accommodation, food, sightseeing, etc. for a consolidated amount of ₹ 3,50,000 for 9 nights and 10 days to : Jaipur- Jaisalmer- Agra- Dubai from 21.01.2025 to 30.01.2025. Tour started from boarding flight from Delhi to Jaipur on 21.01.2025 at 4:00 PM and ended on 30.01.2025 in Dubai at 1:00 PM at the check-out time of hotel.

Day wise itinerary is :

Place	No. of Days
Jaipur	2 days
Jaisalmer	3 days
Agra	2 days
Dubai	3 days
Total	10 days

Determine the exempt and taxable value of supply for "Four Seasons Travel Agency" in the Context of CGST Act, 2017, assuming the amount given are exclusive of GST.

(5 marks)

- (iv) The aggregate turnover of M/s Rajan and Company, a registered person, for the financial year 2023-2024 was ₹ 9.74 Crores.

Advice whether it is mandatory to issue e-invoice for the year 2024-25 in the context of CGST Act, 2017, and also list out any four entities which are exempt from the mandatory requirement of e-invoicing.

(5 marks)

Answer 2A(i)

- i. As per Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017, Services by way of pure labour contracts of construction pertaining to a single residential unit otherwise than as a part of residential complex are exempt under GST. In this case, Pure labour service of construction of single residential unit is forming part of a residential complex and therefore taxable under GST.
- ii. Goods Transport Agency service provided for transportation of goods on a consignment transported in a single carriage does not exceed Rs. 1,500 initially exempt from GST levy. However, this exemption was withdrawn vide Notification No. 4/2022 I.T. (Rate) dated 13.7.2022. Hence, these services are currently taxable.
- iii. Service by way of fumigation in a warehouse of agricultural produce was earlier exempt from GST. However, this exemption has been withdrawn vide Notification No. 4/2022 I.T. (Rate) dated 13.7.2022 and therefore the same is now taxable under GST.
- iv. Accommodation service provided by a hotel for lodging purpose having value of supply of a unit of accommodation equal to or less than Rs. 1000 per day was earlier exempt from GST levy. However, this exemption has been withdrawn vide Notification No. 4/2022 I.T. (Rate) dated 13.7.2022 and therefore the same is now taxable under GST.
- v. Renting of a residential flat given to a registered proprietary concern for use as a guest house for its various salesman is taxable because exemption is available where residential property is used for residential purpose of proprietor on his own account.

Answer 2A(ii)

In the given case, the rates of tax on inputs used in Products P and Q (12% and 18% are higher than rates of tax on output supplies of Products P and Q (5% each). However, Product Q is notified as a product so it is not eligible for refund.

Rule 89(5) of the CGST Rules, 2017 stipulates that in the case of refund on account of inverted duty structure, refund of ITC is granted as per the following formula –

$$\text{Maximum Refund Amount} = \frac{\text{Turnover of inverted rated supply of goods and services} \times \text{Net ITC}}{\text{Adjusted Total Turnover}} - \text{Tax payable on such inverted rated supply of goods and services}$$

Tax payable on inverted rated supply of Product P = Rs.14,00,000 × 5% = Rs. 70,000

Net ITC = Rs. 3,12,000 (Rs.1,10,000 + Rs.1,08,000 + Rs.94,000)

[Net ITC availed during the relevant period needs to be considered irrespective of whether the ITC pertains to inputs eligible for refund of inverted rated supply of goods or not, but ITC on capital goods and Input service is not eligible]

Adjusted Total Turnover = Rs.36,00,000 (Rs. 14,00,000 + Rs.13,00,000 + Rs.9,00,000)

Turnover of inverted rated supply of Product P = Rs.14,00,000

Maximum refund amount is as follows:

$$= [(Rs.14,00,000 \times Rs.3,12,000) / Rs.36,00,000] - Rs.70,000$$

$$= Rs.51,333 \text{ (rounded off)}$$

Answer 2A(iii)

Tour operator service, which is performed partly in India and partly outside India, supplied by a tour operator to a foreign tourist, to the extent of the value of the tour operator service which is performed outside India is exempt.

Any duration of time equal to or exceeding 12 hours shall be considered as one full day and any duration of time less than 12 hours shall be taken as half a day.

Tour started on 21.01.2025 at 4:00 PM, duration is less than 12 hours so half a day is considered.,

Total days in India = 6.5 days

Jaipur	1.5 days	21.01.2025 to 22.01.2025
Jaisalmer	3 days	23.01.2025 to 25.01.2025
Agra	2 days	26.01.2025 to 27.01.2025
Total	6.5 days	

Days in Dubai = 3 Days (28.01.2025 to 30.01.2025)

On 30.01.2025 tour ended on 1:00 PM which is more than 12 hours so full day considered.

Exempt Value of supply = Consideration for tour operated outside India = total consideration for tour in proportion of number of days for which the tour is performed outside India has to the total number of days comprising the tour.

Therefore, Value of exempt supply = Rs. 1,10,526

- Rs.3,50,000 * 3/9.5 = Rs. 1,10,526 or
- 50% of the total consideration charged for the entire tour (Rs.3,50,000 * 50%) = Rs.1,75,000

whichever is less.

Accordingly, The value of taxable supply (Rs.3,50,000- Rs.1,10,526) = Rs. 2,39,474

Answer 2A(iv)

E-invoicing has been made mandatory for all registered businesses (except specified class of persons) with an aggregate turnover in any preceding year from FY 2017-18 onwards greater than Rs.5 crore in respect of B2B supplies (supply of goods or services or both to a registered person) or for exports. Hence, it is mandatory for M/s Ranjan and Company to issue e-invoices for the year 2024-25 as the Aggregate turnover for the year 2023-24 is greater than 5 crores i.e., 9.74 crore.

Following entities are exempt from the mandatory requirement of e-invoicing:

- Special Economic Zone units
- Insurer or banking company or financial institution including NBFC
- GTA supplying services in relation to transportation of goods by road in a goods carriage
- Supplier of passenger transportation service

- Person supplying services by way of admission to exhibition of cinematograph films in multiplex screens
- Government Department and a local authority

Question 3

- (a) Arnav is an Electronic Commerce Operator registered in Delhi. His brother who is settled in London is a well-known lawyer. Arnav has taken legal advice from him free of cost with regard to his family dispute.

Will it be treated as Service under the GST Law ?

(4 marks)

- (b) Examine, whether the activity of import of service in the following independent cases would amount to supply or not under section 7 of the CGST Act, 2017 ?

- Vimla received Vaastu consultancy services for her personal residence premises located at New Delhi from Mr. Devid of London (UK). The amount paid for the said service is 5,000 UK Pound.
- Mrs. Riya received Vaastu consultancy services for her business premises located at New Delhi, from her son Mr. Raju of London (England) Further, Mrs. Riya did not pay any consideration for the said service.

(4 marks)

- (c) Daksh Kumar availing composition scheme during the financial year 2024-25, crosses the threshold limit of turnover of ₹ 1.50 crore on 19th October 2024.

What compliances are required to be carried out by Daksh Kumar under the provision of section 83 of the CGST Act, 2017.

(4 marks)

- (d) With reference to the provision of section 83 of the CGST Act, 2017 regarding the provisional attachment of property, Answer the following with proper reasoning :

- Who can order for provisional attachment of property ?
- Whether the order of provisional attachment is to be issued only at the conclusion of the proceedings ?
- What is the purpose of the provisional attachment ?
- Whether the provisional attachment order is valid for a period of 3 years ?

(4 marks)

- (e) Mr. Sunil has obtained a voluntary registration under the GST law in the State of Karnataka in January, 2024 but has not commenced the business till the month of September, 2024. In October, 2024, the proper officer issues a show cause notice to him for cancellation of his registration.

You are required to examine whether the action taken by the proper officer is justified in law. Also, list any other six circumstances when the proper officer can cancel registration under section 29(2) of the CGST Act, 2017.

(4 marks)

Answer 3(a)

As per Schedule I of CGST Act, *inter alia*, stipulates that import of services by a taxable person from a related person located outside India, without consideration is treated as supply if it is provided in the course or furtherance of business. Explanation to section 15, *inter alia*, provides that persons shall be deemed to be "related persons" if they are members of the same family. Further, as per section 2(49) of the CGST Act, 2017, family means,

- i. the spouse and children of the person, and
- ii. the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person.

In the given case, Arnav has received free of cost legal services from his brother. However, in view of section 2(49) (ii) above, Arnav and his brother cannot be considered to be related as Arnav's brother is a well-known lawyer and is not wholly/mainly dependent on Arnav. Further, Arnav has taken legal advice from him in personal matter and not in course or furtherance of business.

Consequently, services provided by Arnav's brother to him would not treat as supply under Section 7 of CGST Act read with schedule I.

Answer 3(b)

- (i) Supply, under section 7(1)(b) of the CGST Act, 2017, *inter alia*, includes import of services for a consideration even if it is not in the course or furtherance of business. Thus, although the import of service for consideration by Mrs. Vimla is not in course or furtherance of business, as the Vaastu consultancy service has been availed in respect of residence, it would **amount to supply**.
- (ii) Section 7(1)(c) of the CGST Act, 2017 read with para 4 of Schedule I provides that import of services by a taxable person from a related person located outside India, without consideration is treated as supply if it is provided in the course or furtherance of business. Thus, import of service without consideration by Mrs. Riya from her son (being member of the same family, is a related person) will be treated as supply as she receives Vaastu consultancy service for her business premises, i.e., in course or furtherance of business.

Answer 3(c)

The option to pay tax under composition scheme lapses from the day on which his aggregate turnover during the FY exceeds the specified limit (INR 1.50 crore). Such person is required to pay normal tax under section 9(1) from the day his turnover crosses 1.50 Crore and issue tax invoice.

Further, he is required to file intimation for withdrawal from the scheme in prescribed form (FORM GST CMP- 04) within 7 days of the occurrence of such event.

However, such person shall be allowed to avail the input tax credit in respect of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him and on capital goods held by him on the date of withdrawal and furnish a statement, within 30 days of withdrawal of the option, containing the details of such stock held in prescribed form on the common portal.

Daksh Kumar is required to do the following compliances:

- To file a FORM GST CMP-04 within 7 days i.e., before 26th October 2024
- To file details of stock and capital goods, as on 19th, October 2024 in FORM GST ITC-01 within 30 days i.e., on or before 19th November 2024 to take the credit of input on the same.

Answer 3(d)

As per the provision of section 83 under the CGST Act, 2017

- (i) The Commissioner may order for the provisional attachment of the property including bank account belonging to the taxable person.
- (ii) No, it can be issued after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV of the GST law.
- (iii) The purpose of the provisional attachment is to protect the interest of the Government revenue.
- (iv) No, such provisional attachment is valid for one year from the date of the order made by the Commissioner.

Answer 3(e)

As per section 29(2)(d) of the CGST Act, 2017, one of the circumstances where registration can be cancelled by the proper officer from such date, including any retrospective date, as he may deem fit, after giving an opportunity of being heard is where any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration. Thus, the action taken by the proper officer in the given case is justified in law.

As per section 29(2) read with rule 21, in the following cases, registration can be cancelled by the proper officer:

- a) a person paying tax under composition scheme has not furnished the return for a financial year beyond three months from the due date of furnishing the said return.
- b) any registered person required to file return under section 39(1) for each month or part thereof (i.e., monthly return filer), has not furnished returns for a continuous period of 6 months.
- c) any registered person required to file return under proviso to section 39(1) for each quarter or part thereof (Quarterly return under QRMP scheme), has not furnished returns for a continuous period of 2 tax periods.
- d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration
- e) a registered person does not conduct any business from the declared place of business.
- f) a registered person issues invoice/bill without supply of goods/services in violation of the provisions of the CGST Act, or the rules made thereunder.
- g) a registered person violates the provisions of section 171. Section 171 contains provisions relating to anti-profiteering measure.
- h) a registered person violates the provision of rule 10A.
 - i) a registered person avails input tax credit in violation of the provisions of section 16 of the CGST Act or the rules made thereunder.
 - j) a registered person furnishes the details of outward supplies in Form GSTR-1, as amended in Form GSTR-1A if any, under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods.
- k) a registered person violates the provision of rule 86B.
 - l) a registered person violates the provisions of third or fourth proviso to rule 23(1).
- m) registration has been obtained by means of fraud, wilful misstatement or suppression of facts.

Question 4

- (a) Vinit Overseas Ltd. of New Delhi has imported a machine from U.K. (England) by vessel. The details of the import transaction are as follows :

S. No.	Particulars	Amount UK (£)
(i)	Cost of the machine at the factory of the exporter	18,000
(ii)	Transport charges from the factory of exporter to the port for shipment	600
(iii)	Handling charges paid for loading the machine in the ship at the port of exportation	500
(iv)	License fee relating to imported goods payable by the importer as a condition of sale	900
(v)	Actual Freight charges from port of export to port of import are not ascertainable	—
(vi)	Actual insurance charges paid	200
(vii)	Landing charges paid at the place of importation are not ascertainable	
		Amount in ₹
(i)	Handling charges associated with the delivery of the imported goods at the place of importation	12,000

1	Bill of entry :	Dated 21.10.2024 On that day : (a) Exchange rate as notified by CBEC 1 UK £ = ₹ 101 (b) Exchange rate as prescribed by RBI 1 UK £ = ₹ 100
2	Entry inward :	Dated 26.10.2024 On that day : (a) Exchange rate as notified by CBEC 1 UK £ = ₹ 102 (b) Exchange rate as prescribed by RBI 1 UK £ = ₹ 103

You are required to Compute the Assessable Value (in ₹) of machine for the purpose of levying Customs Duty.

(5 marks)

- (b) Compute the amount of Duty Drawback under section 74 of the Customs Act, 1962, the following independent cases :
- Jai Enterprises has imported goods during the financial year 2023-24 and paid ₹ 5,00,000 as import duty. These goods were re-exported after using for 10 months.
 - Dashing Ltd. has imported used wearing apparel in the month of February, 2025 from

Singapore and paid import duty of ₹ 7,50,000. After receipt, the company management has doubts regarding its sale in the local market. Hence, the company has re-exported back the wearing apparel without use.

(5 marks)

Answer 4(a)

Computation of assessable value and Customs duty payable

Particulars	Amount (£)
Cost of Machine at the factory of the exporter	18,000
Add:	
License fee relating to imported goods payable by the importer as a condition of sale (note 1)	900
Transport charges from factory of exporter to the port for shipment	600
Handling charges paid for loading the machine at Port of exportation	500
FOB value	20000
Add: Freight from port of export to port of import (Note 3) (20000 X 20 %)	4000
Add: Insurance (Actual)	200
CIF Value	24200
Add: Landing charges (Note 4]	NIL
Assessable value (in UK £)	24200
Exchange Rate 1UK £ (Note 5)	Rs.101
Assessable value of the Machine for Customs Duty (£ 23100 x 101)	24,44,200

Note

- 1) Rule 10(1)(c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 inter alia provides that value of license fee paid as a condition of sale to be included for the purposes of arriving at the assessable value
- 2) As per rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, only charges incurred for delivery of goods "to" the place of importation are includible in the transaction value. Hence, handling charges associated with the delivery of the imported goods at the place of importation not to be added to the CIF value of the goods. Hence Handling Charges Rs 12,000 not added.
- 3) As per First proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [CVR]] in case the **cost of transport, loading, unloading and handling charges** associated with the delivery of the imported goods to the place of importation is not ascertainable, such cost shall be 20% of the free on-board value of the goods. The question has not indicated as to when the ownership of goods have been transferred to

the buyer. In ordinary course, Free on Board (FOB) value denotes the value at the time the goods are loaded on the vessel. Thus, freight from factory to port and handling charges at the port before loading are liable to be included in the ex-factory price to arrive at the FOB Value.

- 4) No landing charges are to be added to the CIF value in view of the rule 10(2) of the CVR.
- 5) Rate of exchange determined by CBEC on the date of bill of entry is to be considered [Clause (a) of the explanation to section 14 of the Customs Act, 1962].

Answer 4(b)

- (i) Since in the given case, imported goods have been used for more than 9 months but not more than 12 months before re-exportation, 70% of the import duty paid will be allowed as duty drawback to Jai Enterprises. The Amount of Duty drawback available to Jai Enterprises is Rs.3,50,000 (Rs.5,00,000 x 70%).
- (ii) Duty drawback is allowed on re-export of imported wearing apparels only when the same has not been used after import. Where imported goods exported as such without putting into use, the drawback available is 98% of the duty paid on import. Accordingly, Duty drawback available to Dashing Limited is Rs.7,35,000 (Rs.7,50,000 x 98%).

PART - II

Question 5

- (a) With reference to Income Tax Act, 1961, examine the doctrine of form and substance in the context of tax planning.

(3 marks)

- (b) Raja Enterprises, a partnership firm, commenced its trading business in the Jodhpur District of Rajasthan on 1st April, 2024 with two working partners Manish and Nilesh. The partnership deed provides remuneration to both the working partner @ ₹ 50,000 per month. Total remuneration ₹ 12,00,000 to both the partner is within the limit under section 40(b)(v) of the Income Tax Act, 1961. The firm has filed the return for the A.Y. 2025-26 on due date under section 139(1) of the Income Tax Act, 1961. Return was selected for scrutiny assessment.

Assessing officer has disallowed ₹ 4,00,000 as an excessive remuneration to the partners by invoking provision of section 40A(2) of the Income Tax Act, 1961. Such disallowance was made on the ground that it is in excess having regard to their knowledge and qualification and also exceeds the total salary paid to various employees during the year.

Whether the disallowance by the assessing officer is justified ? Answer should be supported with judicial pronouncement, if any.

(3 marks)

- (c) "The provisions of section 115JB (Minimum Alternate Tax) are also applicable in case of foreign companies".

In the context of provisions contained in the Income Tax Act, 1961, examine the correctness of the above statement.

(3 marks)

- (d) Briefly explain the provision of section 115 BBG of The Income Tax Act, 1961, regarding taxability of income earned from transfer of "Carbon Credits" for assessment year 2025-26.

(3 marks)

- (e) What is the main purpose of "Impermissible Avoidance Agreement" ? Also state the elements or tests need to be satisfied to consider an agreement as Impermissible Avoidance Agreement.

(3 marks)

Answer 5(a)

The following are certain principles enunciated by the Courts on the question as to whether it is the form or substance of a transaction, which will prevail in income-tax matters:

- Form of transaction is to be considered in case of genuine transactions - It is well settled that when a transaction is arranged in one form known to law, it will attract tax liability whereas, if it is entered into in another form which is equally lawful, it may not. Therefore, in considering whether a transaction attracts tax or not, the form of transaction put through is to be considered and not the substance. However, this rule applies only to genuine transactions.
- True Legal relation is crucial element for taxability – It is open for the authorities to pierce the corporate veil and look behind the legal façade at the reality of the transaction. The taxing authority is entitled as well as bound to determine the true legal relation resulting from a transaction. The true legal relation arising from a transaction alone determines the taxability of a receipt arising from the transaction.
- Substance (i.e., actual nature of expenses) is relevant and not the form – In order to determine whether a particular item of expenditure is of revenue or capital nature, the substance and not merely the form should be looked into.

Answer 5(b)

As per Allahabad High Court in the case of CIT vs. Great City Manufacturing Co, the assessing officer is required to ensure that:

- Remuneration is paid to the working partners mentioned in the partnership deed.
- The terms and conditions of the partnership deed provide for payment of remuneration to the working partner
- The remuneration is within the limits prescribed under section 40(b)(v) of the Income Tax Act, 1961.

If above conditions are complied with, the Assessing officer cannot disallow any part of remuneration on the ground that it is excessive.

Accordingly, the disallowance by the Assessing officer is not justified and cannot be disallowed by invoking the provisions of section 40A(2) Income Tax Act, 1961.

Answer 5(c)

The statement is correct; since, there is no provision in section 115JB restricting its applicability to only domestic companies and therefore, section 115JB is applicable to both domestic and foreign companies.

The provisions of section 115JB are applicable in the case of an assessee, being a company, where 15% of its book profit exceeds the tax payable on the total income computed under the normal provisions of the Act. Therefore, the provisions of section 115JB would be attracted both in the case of a domestic as well as a foreign company, if the tax payable on its total income is less than 15% of its book profit.

However, section 115JB will not be applicable to a foreign company, if –

- i. The assessee is a resident of a country or a specified territory with which India has Double Taxation Avoidance Agreement under section 90 / 90A and the assessee does not have a permanent establishment in India in accordance with the provisions of such agreement; or
- ii. The assessee is a resident of a country with which India does not have Double Taxation Avoidance Agreement and the assessee is not required to seek registration under any law for the time being in force relating to companies.

Answer 5(d)

As per Section 115BBG of Income Tax Act, 1961, Where the total income of an assessee includes any income by way of transfer of carbon credits, the income-tax payable shall be the aggregate of:

- a. the amount of income-tax calculated on the income by way of transfer of carbon credits, at the rate of ten per cent; and
- b. the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (a).

Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) of sub-section (1).

Answer 5(e)

The main purpose or intent of the "Impermissible Avoidance Agreement" as mentioned in the provisions related to General Anti Avoidance Rules (GAAR) under Income Tax Act is to **obtain Tax benefit**.

The arrangement should have one or more below mentioned specified elements:

- The arrangement creates rights or obligations which are not ordinarily created between persons dealing at arm's length
- The arrangement results, directly or indirectly, in the misuse or abuse of the provisions of the Act
- The arrangement lacks commercial substance or is deemed to lack commercial substance under section 97 of the Act, in whole or in part
- The arrangement is entered into or carried out by means or in a manner which are not ordinarily employed for bona fide purposes.

(Attempt all parts of either Q. No. 6 or 6A)

Question 6

- (a) Ms. Angel, a British national, got married to Mr. Radhey of India in UK on 02.03.2024 and came to India for the first time on 16.03.2024. She left for UK on 19.9.2024. She returned to India again on 27.03.2025. While in India, she had purchased a show room in Mumbai on 30.04.2024, which was leased out to a company on a rent of ₹ 25,000 p.m. from 01.05.2024. She had taken loan from a bank for purchase of this show room on which bank had charged interest of ₹ 97,500 up to 31.03.2025. She had received the following cash gifts from her relatives and friends during 1.4.2024 to 31.3.2025 :

- (i) From parents of husband ₹ 51,000
- (ii) From married sister of husband ₹ 11,000

- (iii) From two very close friends of her husband (₹ 2,51,000 and ₹ 21,000)

Determine her residential status and compute the total income chargeable to tax for the A.Y. 2025-26, if she opts out of the new tax regime under section 115BAC.

(5 marks)

- (b) Z Ltd. is a listed company on recognized stock exchange, registered in Ahmedabad (Gujarat). The management of the company finalized a restructuring scheme being "Buy-back of its own shares" on 05th July, 2024. The company paid ₹ 20,00,000 towards buy back of the shares on 30th July, 2024. These shares were allotted 5 years back and the company received ₹ 5,00,000 as consideration of shares allotment (which consist of ₹ 2,00,000 towards share capital and ₹ 3,00,000 towards share premium). The company deposited the additional tax on buy-back of shares on 30th September 2024.

Compute the additional income tax payable by Z Ltd. under section 115QA of the Income Tax Act, 1961 for A.Y. 2025-26. Also mention the last date by which the company is required to pay tax to the credit of the government. Whether Z Ltd. is liable to pay interest, if any under the provision of the Income Tax Act, 1961 ?

(5 marks)

- (c) With reference to Transfer pricing, discuss under what circumstances, secondary adjustments are applicable under section 92CE of the Income Tax Act, 1961.

(5 marks)

Answer 6(a)

Under section 6(1), an individual is said to be resident in India in any previous year, if he/she satisfies any one of the following conditions:

- (i) He/she has been in India during the previous year for a total period of 182 days or more, or
- (ii) He/she has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 60 days in the previous year.

If an individual satisfies any one of the conditions mentioned above, he/she is a resident. If both the above conditions are not satisfied, the individual is a non-resident.

Therefore, the residential status of Ms. Angel, a British National, for A.Y.2025-26 has to be determined on the basis of her stay in India during the P.Y.2024-25 and in the preceding four previous years.

Her stay in India during the P.Y.2024-25 and in the preceding four years are as under:

P.Y. 2024-25

01.04.2024 to 19.09.2024	-	172 days
27.03.2025 to 31.03.2025	-	5 days
Total	-	177 days

Four preceding previous years

P.Y. 2023-24 [1.4.2023 to 31.3.2024]	-	16 days
P.Y. 2022-23 [1.4.2022 to 31.3.2023]	-	Nil
P.Y. 2021-22 [1.4.2021 to 31.3.2022]	-	Nil
P.Y. 2020-21 [1.4.2020 to 31.3.2021]	-	Nil
Total		16 days

The total stay of the assessee during the previous year in India was less than 182 days and during the four years preceding was for 16 days. Therefore, due to non-fulfilment of any of the two conditions for a resident, she would be treated as non-resident for the A.Y.2025-26.

Also, the additional clauses to declare an individual to be Resident but not ordinary resident would not apply to Ms. Angel as she is neither Person of Indian Origin nor an Indian citizen.

Computation of total income of Ms. Angel (Non-Resident) for the A.Y. 2025-26

Particulars	Amount (Rs.)	Amount (Rs.)
Income from house property		
Show room located in Mumbai remained on rent from 01.05.2024 to 31.03.2025 @ Rs 25,000 p.m.		2,75,000
Gross Annual Value [Rs. 25,000 x 11] (See Note 1 below)		
Less: Municipal taxes		Nil
Net Annual Value (NAV)		2,75,000
Less: Deduction under section 24		
30% of NAV	82,500	
Interest on loan	97,500	(1,80,000)
Income under the head House Property		95,000
Income from other sources		
Cash gifts received from non-relatives is chargeable to tax as per section 56(2)(x), if the aggregate value of such gifts exceeds Rs. 50,000.		
Rs. 50,000 received from parents of husband would be exempt since parents of husband fall within the definition of 'relative' and gifts from a relative are not chargeable to tax.	Nil	
Rs. 11,000 received from married sister of husband is exempt, since sister-in-law falls within the definition of relative and gifts from a relative are not chargeable to tax.	Nil	
Gift received from two friends of husband Rs.2,51,000 and Rs. 21,000 aggregating to Rs.2,72,000 is taxable under section 56(2)(x) since the aggregate of Rs. 2,72,000 exceeds Rs. 50,000. (See Note 2 below)	2,72,000	2,72,000
Total income		3,67,000

Notes:

1. Actual rent received has been taken as the gross annual value in the absence of other information (i.e., Municipal value, fair rental value and standard rent) in the question.

2. If the aggregate value of taxable gifts received from non-relative exceed Rs. 50,000 during the year, the entire amount received (i.e., the aggregate value of taxable gifts received) is taxable. Therefore, the entire amount of Rs.2,72,000 is taxable under section 56(2)(x). Further, these gifts are taxable in India in hands of Angel who is NON-RESIDENT in India as the said income (gifts) are arising in India.

Answer 6(b)

Computation of Additional income tax payable by Z Ltd.

Particulars	Amount (Rs.)
Amount paid by company on buy-back of shares	20,00,000
Less: Amount received at the time of issue of shares	5,00,000
Distributed Income	15,00,000
Tax on Distributed Income @ 20% under section 115QA of the Income Tax Act	3,00,000
Add: Surcharge @ 12%	36,000
Total	3,36,000
Add: Health & Education cess @ 4% on Rs. 3,36,000	13,440
Tax Liability of Z Limited under section 115QA	3,49,440

Note: The provisions of section 115QA of the Income Tax Act are abolished with effect from 01.10.2024. The tax on buy back of shares shall be paid by shareholders w.e.f. 01.10.2024. However, in given case, buy back of shares related to 5th July, 2024 and therefore, provisions of section 115QA are made applicable.

The principal officer of the company and the company shall be liable to pay the tax to the credit of the Central Government within 14 days from the date of payment of any consideration to the shareholder on buy back of shares. Accordingly, Z Ltd. is required to deposit the tax by 13th August, 2024.

Z Ltd. is liable to pay interest @ 1% per month or part of the month under section 115QB if the tax was not paid by the due date.

Amount of Interest = Rs.3,49,400 (rounded off as per rule 119A) x 2% (for 2 months) =Rs.6,988.

Answer 6(c)

Secondary Adjustment will be applicable in the following situations where primary adjustment to transfer price:

- has been made suo moto by the assessee in his return of income.
- made by the Assessing Officer has been accepted by the assessee.
- is determined by the advance pricing agreement entered into by the assessee under section 92CC
- is made as per the safe harbor rules framed under section 92CB
- is arising as a result of resolution of an assessment by way of mutual agreement procedure under DTAA entered into under section 90/90A.

Note: Secondary adjustments are required only in situations where effect of adopting Arm's Length Price (Primary adjustment) is increase in total income of Indian entity by amount exceeding ₹1 crore.

(Or Alternative to Question No. 6)

Question 6A

- (i) JKL LLP has an income of ₹ 70,00,000 under the head 'profits and gains of business or profession'. One of its businesses is eligible for deduction @ 100% of profits under section 80-IB. The profit from such business included in the business income is ₹ 55,00,000.

Compute the tax payable by the JKL LLP for the A.Y. 2025-26, assuming that it has no other income during the previous year 2024-25 and AMT rate is 18.50%.

(5 marks)

- (ii) "There are certain exclusions from the provisions of General Anti Avoidance Rules (GAAR)." Briefly discuss those exclusions with regards to Income Tax Rules, 1962.

(5 marks)

- (iii) Narendra, aged 54 years, is resident and ordinarily resident in India. His income during previous year 2024-25 is ₹ 14,20,000 from a business in India and ₹ 3,55,000 from a business in a foreign country with whom India has agreement for avoidance of double taxation (DTAA). According to the DTAA, income is taxable in the country in which it is earned and not in other country. However, in the other country, such income to be included for computation of tax rate.

According to the tax laws of the foreign country, Narendra has paid ₹ 35,500 as tax in that country. During the previous year, Narendra has paid ₹ 35,000 as tuition fee for his daughter in India and ₹ 20,000 as life insurance premium for his dependent father. Narendra has also received an interest of ₹ 40,000 on Government securities. Calculate the Income tax liability of Narendra for the assessment year 2025-26, assuming assessee has not opted for Section 115BAC of the Income tax Act, 1961.

(5 marks)

Answer 6A(i)

Computation of Tax payable by JKL LLP for A.Y. 2025-26

Particulars	Amount (Rs.)
Total Income	70,00,000
Less: Deduction under section 80 IB	(55,00,000)
Taxable Income	15,00,000
Tax @ 30%	4,50,000
Health & Education Cess @4%	18,000
Total Tax	4,68,000

Computation of Alternate Minimum Tax 'AMT'

Particulars	Amount (Rs.)
Total Income	70,00,000
AMT on adjusted Total Income @ 18.5%	12,95,000
Health & Education Cess @4%	51,800
Total Tax	13,46,800

Since, the regular income tax payable is less than AMT, the adjusted total income would be deemed to be the income of JKL LLP and it would be liable to pay tax @ 18.5% plus cess i.e. Tax payable will be higher of AMT or Normal tax i.e. Rs. 13,46,800. Further, the LLP would be eligible for tax credit in 15 subsequent years to the extent of difference between the AMT and Normal Tax i.e. Rs. 8,78,800 (13,46,800-4,68,000), in the year in which the tax payable under regular provisions exceeds the AMT.

Answer 6A(ii)

Rule 10U of the Income-tax Rules, 1962 provides for certain exclusions from the provisions of General Anti Avoidance Rules (GAAR), which are discussed below:

- a) Monetary Threshold:** There is a monetary threshold of INR 3 crores for the applicability of GAAR. The threshold has to be seen with respect to each assessment year. Also, the threshold is not taxpayer-specific and it has to be determined with regard to all the parties to the arrangement.
- b) Exemption to Foreign Institutional Investors (FII) and Foreign Portfolio Investors:** The provisions of GAAR are not applicable to an FII
 - Who is an assessee under the Act
 - Who has not taken benefit of any double taxation avoidance agreement
 - Who has invested in listed securities, or unlisted securities, with the prior permission of the competent authority
- c) Investments in FIIs:** The provisions of GAAR shall not apply to a person who is a non-resident in relation to investment made by him by way of offshore derivative instruments or otherwise, directly or indirectly in a FII.

Answer 6A(iii)**Computation of Total Income of Mr. Narendra for the Assessment Year 2025-26**

Particulars	Amount in Rs.
Business income in India	14,20,000
Interest on Government Securities	40,000
Gross Total Income	14,60,000
Less: Deduction u/s 80C (Tuition fee)	(35,000)

Total Income	14,25,000
Add: Foreign income to be included for rate purpose	3,55,000
Total Income	17,80,000
Tax on above (including 4 % cess)	3,60,360
Less: Relief u/s 90 [Rs.3,55,000 x 20.245 %]	(71,870)
Tax Payable (Rounded off)	2,88,490

Note:

1. Average rate of tax = Rs. 3,60,360 / Rs.17,80,000 x 100 = 20.245%
2. LIC paid for father is not deductible under section 80C.

DRAFTING, PLEADINGS & APPEARANCES

MODULE 1 PAPER 3

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

Question 1

- (a) The Board of Directors of the Kina Stock Brokers Limited comprises of six persons viz., Nagaraju, Ishaan, Avikesh, Kiran Kumar, Shourya and Shreyas. A meeting of the Board was convened on 4 February 2025. The notice for which was issued on 15 January 2025. The notice was served to all the directors except Ishaan. During the board meeting on the scheduled date, a resolution was passed for the appointment of Meghna, as an Additional Director. Examine the validity of the resolution.
- (b) Pajaka Agro Products Limited was in process of the expansion of the business. During a meeting of the Board of Directors, it was proposed to appoint Narmadha as an Additional Director. Draft board resolution for the appointment of Narmadha as an Additional Director.
- (c) Shrilekha is Ahalya's grand-daughter. Out of love and affection. Ahalya proposes to gift her property to Shrilekha at her marriage. Draft a gift deed for the same. If required, assume facts.
- (d) Draft a Special Power of Attorney in favour of Sudarshan Bhat, a Practising Company Secretary, to be filed with the Registrar of Companies/Ministry of Corporate Affairs at the time of incorporation of The Poornabodha Chemicals Limited. Assume facts, if required.

(5 marks each)

Answer 1(a)

All the stipulations with respect to issuing Notices of Meetings emphasise that a Meeting should be called and held after issuing a proper Notice in the manner prescribed by Secretarial Standard-1. Any material irregularity in the Notice may affect the validity of the Meeting itself and the decisions taken thereat.

Section 173 of the Companies Act, 2013 relating to Meetings of Board under sub-section (3) prescribes that a meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company. Notice must be sent by hand delivery, post, or electronic means.

Secretarial Standard on Board Meetings (SS-1) states that the notice of every Meeting shall be given to every Director in writing. Therefore, non-receipt of notice by any one director will render the meeting invalid.

In the case of *Parmeshwari Prasad Gupta v. Union of India* 1973 AIR 2389, where the Notice of a Meeting was not sent to all the Directors, it was held that resolutions passed at such a Meeting are not valid.

In the light of the above discussion, we may say that the resolution passed at the meeting for the appointment of Meghna as Additional Director on the Board of Kina Stock Brokers Limited would not be valid as notice of the said meeting was not served on Ishaan, one of the directors.

Answer 1(b)

“RESOLVED THAT pursuant to the provisions of Section 161(1) of the Companies Act, 2013 and Companies (Appointment and Qualification of Directors) Rules, 2014 and any other applicable provisions read with Article of the Articles of Association of the company, Ms. Narmadha (DIN.....) who has consented to act as a director and submitted her declaration under Section 152(5) and Form DIR-8, be and is hereby appointed as an Additional Director of the company to hold office from the date of this Meeting till the Annual General Meeting of the company.”

RESOLVED FURTHER THAT Ms. Narmadha has confirmed that she is not disqualified from being appointed as a director under Section 164 of the Companies Act, 2013 and her appointment complies with the conditions laid down under applicable laws.

“RESOLVED FURTHER THAT,, Company Secretary be and is hereby authorised to sign and file necessary forms (DIR-12) / documents with the Registrar of Companies and make entries, as appropriate in relation to appointment as an additional director, in the registers of the company.”

Answer 1(c)

THIS DEED of GIFT is made on the day of 20..... BY and BETWEEN Ahalya (called “the donor”) AND Shrilekha (called “the donee”).

WHEREAS the donor is owner of the property described in the Schedule and out of her love and affection for her granddaughter, the donee, is desirous of making a gift of the said property to the donee at the time of her marriage.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. The Donor is the absolute and sole owner of the immovable property bearing No. _____, situated at _____, more fully described in the Schedule hereunder (hereinafter referred to as the **“Scheduled Property”**).
2. In consideration of the natural love and affection of the donor for the donee, the donor transfers to the donee free from encumbrances ALL the property described in the Schedule TO HOLD the same to the donee absolutely and forever.
3. The donee accepts the transfers.
4. That the Donor hereby delivers constructive possession of the Scheduled Property to the Donee with immediate effect. The Donee shall henceforth be the absolute owner of the property and enjoy it peacefully and exclusively.
5. That the Donor declares that the Scheduled Property is her self-acquired property, free from all encumbrances and that she has a clear and marketable title to gift the same.
6. All applicable stamp duty, registration charges, and incidental expenses related to this gift deed shall be borne by the Donee, unless otherwise mutually agreed.
7. This gift is absolute and irrevocable, and the Donor has no right, claim, or interest in the Scheduled Property henceforth.

SCHEDULE OF PROPERTY

(Provide detailed description of the property)

All that piece and parcel of immovable property bearing House No. _____, situated at [Ward No.], [Municipality/Corporation], [Village/Taluk/City], measuring _____ sq. ft. of land together with building constructed thereon, bounded as under:

- North: _____
- South: _____

- East: _____
- West: _____

IN WITNESS WHEREOF, etc.,

The Schedule above referred to

Signed, sealed and delivered

Ahalya

Shrilekha

Answer 1(d)

SPECIAL POWER -OF-ATTORNEY TO BE FILED WITH THE REGISTRAR AT THE TIME OF INCORPORATION OF A COMPANY

Mr. Sudarshan Bhat, FCS/ACS no., Practising Company Secretary,, is hereby appointed as our lawful Attorney to act jointly and severally on our behalf and in our name and to do all or any of the following acts, deeds, matters, and things in connection with and relating to the incorporation of the proposed company, *The Poornabodha Chemicals Limited*, under the provisions of the Companies Act, 2013 and other applicable laws.

Mr. Bhat is authorised to make any modification, alteration, correction, additions, in the Memorandum and Articles of Association and other documents filed with the Registrar of Companies for the registration of the Company. He can receive and respond to any notices, queries, objections or communications issued by the Registrar of Companies in relation to the incorporation process. He is also authorised to collect the certificate of incorporation.

This Special Power of Attorney shall remain valid and effective until the date of incorporation of *The Poornabodha Chemicals Limited*, or until revoked in writing, whichever is earlier. Any act lawfully done by the said Attorney within the scope of this authority shall be deemed to have been done by us.

Place:

Date:

Promoters/Directors

Accepted by the Attorney:

I, Sudarshan Bhat, hereby accept the appointment made herein and agree to act in accordance with the powers conferred upon me under this Special Power of Attorney.

Signature: _____

Name: Mr. Sudarshan Bhat

ACS No. [xxx], CP No. [xxx]

Witnesses:

1. **Signature:** _____

Name:

Address:

Occupation:

2. **Signature:** _____

Name:

Address:

Occupation:

Attempt all parts of either Q. No. 2 or Q. No. 2A

Question 2

Explain the following :

- (a) The important points a Company Secretary has to adhere while drafting Article of Association of a public limited company.
- (b) Why surrender of lease is not a transfer ?
- (c) The essential characteristics of a Will.
- (d) The term Reddendum.

(4 marks each)

Answer 2(a)

Important points the Company Secretary has to adhere to while drafting the Articles of Association of a public limited company

Utmost care is required to be taken to draft the Articles. It should contain strictly only relevant and necessary matters. In its draft, all efforts must be made to incorporate comprehensive provisions so as to cover all statutory requirements and all possible contingencies. Any alteration requires a cumbersome procedure to be followed, which is both expensive and time-consuming.

Articles, as a public document of the company, have evidentiary value in matters that involve dealings of the company with its own members or third parties. Any outsider has constructive notice of the contents of the Articles and is expected to inspect before entering into any transaction with the company. Articles must be signed by the subscribers of the Memorandum and be registered along with the Memorandum.

Articles shall be divided into paragraphs numbered consecutively. This will help the company to alter the articles conveniently.

Some important points which a Company Secretary should bear in mind while drafting the Articles are as follows:

1. Share capital, its kinds rights attached to different kinds of shares or any special privileges attached thereto should be considered and incorporated in the Articles.
2. Directors - appointment of directors, their voting rights, resignation, termination etc., should be given due consideration, and their rights, powers and privileges should be incorporated in the Articles. Proportional representation may also be looked into.
3. In Government Companies, Joint Venture Companies, Joint Ventures with foreign companies, joint venture with Government Companies, the main terms of their partnership in Share Capital as well as the management of the affairs of the company with power and authority delegation be relevantly discussed in the Articles with scope and limitations thereto to avoid any misinterpretation.
4. As far as possible, the regulation given in Table F may be borrowed, even if it is not made applicable, so that the Article may conform to the intent and spirit of the law.
5. Efforts should be made to make each article self-explanatory and self-interpretative to avoid misleading conclusions. Coherence and sequence of the contents should be maintained at any cost.
6. Any items that are already mentioned in the Memorandum and are to be mentioned in

Articles, it is better that it is put in words such as "as mentioned in Memorandum of Association" which will skip the requirement of altering Articles when Memorandum is altered.

7. No provision that a company cannot do either as per the Memorandum or the Companies Act or any other law, should find a place in articles: e.g. expulsion of members. This is opposed to Company Jurisprudence and is ultra vires of the Act.
8. Where the company would require assistance from financial Institutions, provisions be made for the appointment of nominee directors, conversion of loans from financial institutions into equity, etc.
9. Exemptions available to private companies by virtue of their Articles need to be suitably addressed in the Articles, as also the powers which can be exercised by the Board/ Company only if the Articles contain provision to that effect.
10. After drafting a proper balancing should be done with the Memorandum's contents, as to coverage, inconsistencies with it, contradictions occurred etc. to enable proper modification in time. It is better to have an Article of an existing company in the same field of activity, either to modify it or at least to know the relevant matters which can be included in the Draft.

Answer 2(b)

Surrender of lease is not a transfer but mere yielding up by the lessee of his interest under the lease to the lessor by mutual agreement. It is in effect merger of the estate of the lessee into the reversion. It is not a transfer or an assignment of any right or estate within the meaning of Section 5 of the Transfer of Property Act (*Makhan Lal vs Nagendra Nath*, (1933) 60 Cal 379). The person who surrenders is called the surrenderer and the person to whom surrender is made is called the surrenderee. A surrender must be made with clear intention to yield up as mere non-payment of rent for years together or abandonment of the site does not amount to surrender (*Misri Lal vs Durga Narain*, AIR 1940 All. 317).

A Requisition Order by the Government does not amount to any surrender (*Torabai v. Padan Chand*, 62 CWN 176). It may be expressed or implied. Except in a case of some special kinds of lease as required by special Act, no writing or registration is necessary. A surrender may be oral, if accompanied by delivery of possession.

Answer 2(c)

The essential characteristics of a Will are as follows:

- (a) The document must be in accordance with the requirements laid down under section 63 of Indian Succession Act, 1925; i.e., executed by a person competent to make Will and attested as required under the Act.
- (b) The declaration should relate to the properties of the testator, which he wishes to bequeath.
- (c) The declaration must be to the effect that it operates after the death of Testator.
- (d) It is revocable during the life time of the testator. As per section 62 of the Indian Succession Act, 1925 a will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will. Any clause in a will that the testator cannot revoke, it will render the Will void.
- (e) It is of an ambulatory nature which can be modified or altered at any time by the testator.
- (f) After the Indian Succession Act, 1925, Wills (except made by Mohammedans) should be made in writing.

Answer 2(d)

Reddendum is a clause peculiar to a deed of lease. Here is mentioned the mode and time fixed for payment of rent under the lease. It begins with the word “rendering or paying” with reference to the rent. Thus, it is a reserving clause in a deed, especially the clause in a lease that specifies the amount of the rent and when it should be paid.

It mentions that rent is payable during the term of the lease. Place where payable and instalments are mentioned. If there is apportionment of rent that is also mentioned.

OR (Alternate question to Q. No. 2)**Question 2A**

Distinguish between the following :

- (i) FIR and Complaint
- (ii) Habeas Corpus and Mandamus.
- (iii) Memorandum of Association and Articles of Association.
- (iv) Conveyance and Contract.

(4 marks each)

Answer 2A(i)

Basis of Distinction	FIR (First Information Report)	Complaint
Statutory Provision	Governed by Section 173 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)	Defined under Section 2(1)(h) and governed by Sections 223–226 of BNSS
Definition	FIR is the information given to the police relating to the commission of a cognizable offence and is recorded under Section 173(1).	A complaint is an oral or written allegation made to a Magistrate with the intent to take legal action. It does not include a police report.
Who Can File	Any person (victim, eyewitness, or any third party with knowledge of the offence).	Any person including the victim, an authorized representative, or a third party.
To Whom It Is Made	Made to the Officer-in-Charge of a Police Station.	Made to a Magistrate who is competent to take cognizance of offences.
Purpose	To inform the police about a cognizable offence and initiate investigation.	To bring the offence to the notice of the judicial authority, especially when the police fail to act or for non-cognizable offences.
Nature of Offence	Generally relates to cognizable offences (e.g., murder, dacoity, kidnapping).	May relate to both cognizable or non-cognizable offences.

Basis of Distinction	FIR (First Information Report)	Complaint
Registration Requirement	Mandatory to register FIR under Section 173(1) if information discloses a cognizable offence (reinforced by Lalita Kumari v. State of U.P.).	Not mandatory for Magistrate to take action. Complaint may be dismissed under Section 226 after examination under Sections 223–226.
Investigation Initiated	Yes, police are duty-bound to investigate after registering an FIR.	Magistrate may order investigation under Section 225(1) or take cognizance directly.
Police Involvement	Directly involves police action from the beginning.	Police are involved only if Magistrate orders investigation.
Format and Procedure	FIR is written and signed, and a copy is provided to the informant under Section 173(2).	No fixed format. Complaint can be oral or written (oral complaints are reduced to writing).
Copy to Informant/ Complainant	A free copy must be given to the informant.	No statutory requirement for providing a copy of complaint to complainant.
Objective	To enable prompt police action to investigate and prevent escalation.	To seek judicial cognizance where police have failed to act, or offence is private in nature.
Examples	FIR: Theft, Robbery, Murder, Rape, Kidnapping.	Complaint: Cheating, Defamation, Domestic Violence, Breach of Trust.

Answer 2A(ii)

Habeas Corpus: The writ of habeas corpus is a remedy available to a person who is confined without legal justification. The words “Habeas Corpus” literally mean “to have a body”. This is an order to let the Court know on what ground he has been confined and to set him free if there is no legal justification for his detention. This writ has to be obeyed by the detaining authority by production of the person before the Court. Under Articles 32 and 226 of the Constitution, any person may move the Supreme Court and the High Court of competent jurisdiction respectively, for the issue of this writ. The applicant may be the prisoner himself moving the Court or any other person may move the Court on his behalf to secure his liberty praying for the issue of the writ of habeas corpus. No person can be punished or deprived of his personal liberty except for violation of any law and in accordance with the due process of law. Dis-obedience to the writ of habeas corpus attracts punishment for contempt of Court under the Contempt of Courts Act, 1971.

Mandamus: The expression “mandamus” means a command. The writ of mandamus is, thus, a command issued to direct any person, corporation, inferior Court or Government authority requiring him to do a particular thing therein specified which pertains to his or their office and is further in the nature of a public duty. This writ is used when the inferior tribunal has declined to exercise jurisdiction. Mandamus can be issued against any public authority. The applicant must have a legal right to the performance of a legal duty by the person against whom the writ is prayed. Mandamus is not issued if the public authority has a discretion.

Mandamus can be issued by the Supreme Court and all the High Courts to all authorities. However, it does not lie against the President of India or the Governor of a State for the exercise of their duties and powers (Article 360 of the Constitution of India). It also does not lie against a private individual or body except where the State is in collusion with such private party in the matter of contravention of any provision of the Constitution or of a Statute. It is a discretionary remedy and the Court may refuse if alternative remedy exists except in case of infringement of Fundamental Rights.

Answer 2A(iii)

Memorandum of Association and Articles of Association

The main points of distinction between memorandum and articles may be noted as follows:

1. The memorandum contains the fundamental conditions upon which alone the company is allowed to be incorporated. These conditions are introduced for the benefit of the creditors, and the outside public, as well as the shareholders. The articles of association are the internal regulations of the company; they only regulate the relationship between company and the shareholders/members and amongst the members themselves.
2. Memorandum lays down the area beyond which the activities of the company cannot go. Articles provide for regulations inside that area. Thus, memorandum lays down the parameters for the articles.
3. Memorandum of association can be altered only under certain circumstances and in the manner provided in the Companies Act, 2013. In most of the cases permission of the Central Government/Tribunal is required, beside the approval of the shareholders in a general body meeting either by way of an ordinary resolution or special resolution. Generally, articles can be altered by the members by passing a special resolution only.
4. Memorandum of Association cannot include any clause contrary to the provisions of the Companies Act. The articles of association are subsidiary both to the Companies Act and the memorandum of association.
5. Acts done by a company beyond the scope of the memorandum are *ultra vires* and, thus, absolutely void. They cannot be ratified even by unanimous vote by all the shareholders. But the acts beyond the articles can be ratified by the shareholders provided the relevant provisions are not beyond the memorandum.

Answer 2A(iv)

Conveyance and Contract

Having understood the meaning of conveyance, it becomes necessary to understand the distinction between conveyance and contract before discussing basic requirements of conveyance or deed of transfer. Apparently, conveyance is not a contract. The distinction between conveyance and contract is quite clear. Contract remains to be performed and its specific performance may be sought but conveyance passes on the title to property to another person. Conveyance does not create any right of any action but at the same time it alters the ownership of existing right. There may be cases where the transaction may pertain both contract as well as conveyance. For example, lease, whereby obligation is created while possession of the property is transferred by lessor to lessee. More so, contracts are governed by provisions of the Indian Contract Act, 1872 whereas the cases of transfer of immovable property are governed by the Transfer of Property Act, 1882 in India. A mere contract to mortgage or sale would not amount to actual transfer of interest in the property but the deed of mortgage or sale would operate as conveyance of such interest. In other words, once the document transferring immovable property has been completed and registered as required by law, the transaction becomes conveyance. Any such transaction would be governed under the provisions of the Transfer of Property Act, 1882.

Attempt all parts of either Q. No. 3 or Q. No. 3A**Question 3**

- (a) Haritha and Poojitha entered into an agreement for the sale of an immovable property under construction in Haridwar. The agreement contained all relevant information such as details of the property, consideration and warranties as to the title being free from all encumbrances. However, some details regarding the consideration such as timeline of the payments, interest on delayed payments etc were not disclosed in the agreement. Examine the validity of the agreement between Haritha and Poojitha. Cite leading case law on the point.

(4 marks)

- (b) Durga Parameshwari Automobiles Limited filed a petition with certain pleadings on 3 March 2025, before a court of competent jurisdiction. The same was duly signed by Sumalatha Shetty, Company Secretary of the company. There was no clear authority/ document with the Company Secretary to sign the said pleadings on behalf of the company. However, on 18 March 2025, a Board resolution was submitted duly ratifying Sumalatha's actions in the matter. Discuss the validity of the ratification. Refer leading case law on the point.

(4 marks)

- (c) A General Power of Attorney (GPA) was executed by the Board of Directors of Abdul Rehman Textiles Limited on 4 December 2023. On 12 March 2024, an authority exercising competent jurisdiction passed an order for the winding up of Abdul Rehman Textiles Limited. Draft specimen GPA and examine the validity of the GPA executed by the said company.

(4 marks)

- (d) The Articles of Association of Shabari Clinkers Limited provides that a meeting of the Board of Directors be held in Udupi, Karnataka. A meeting of the Board of Directors was convened and held in Dwaraka, Gujarat. Examine the validity of the meeting and the business transacted there at.

(4 marks)

Answer 3(a)

In *Ramchandra v. Chinnubhai*, AIR 1945 Mad.10, it was held that if the material terms of an agreement are clear and specific, omission of certain details, which can be worked out by consent of the parties or in its absence, be settled by the court, the agreement would not be invalidated. As long as the essential ingredients of a valid contract as contemplated in the Contract Act, 1872 are fulfilled, the agreement can be enforced.

The agreement between Haritha and Poojitha is not invalid merely because it lacks the timeline of payments or interest clause, as long as the consideration amount is fixed and agreed, the intention to transfer property is clear, and other material terms (like property details and clear title) are specified.

However, it may be deficient and could lead to future disputes due to ambiguity in payment obligations. This can be settled by the court, or the parties should supplement the agreement with an addendum detailing payment timelines and interest terms.

Answer 3(b)

In *United Bank of India v. Naresh Kumar*, AIR 1997 SC 2. it has been held that at the time of filing of petition, if the pleadings are signed by a person not authorised, the same could be ratified subsequently.

In the given situation, Sumalatha Shetty (Company Secretary) filed pleadings on 3 March 2025, without clear authority. The Board of Directors ratified her action on 18 March 2025 vide a resolution. The ratification is legally valid. It relates back to the date of the original filing (3 March 2025). Hence, the pleadings are not defective, and the court should not dismiss them on technical grounds.

The ratification by the Board on 18 March 2025 is valid in law and effectively cures the defect of lack of initial authority. The act of filing pleadings by Sumalatha Shetty, though unauthorized initially, is deemed to have been done with authority upon such ratification.

Answer 3(c)

Specimen General Power of Attorney

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS 'ABDUL REHMAN TEXTILES LIMITED' a Company registered under the Companies Act, 2013, and having its registered office at..... (hereinafter called the "Company");

AND WHEREAS the Company proposes to install plant and machinery through Leasing arrangements;

AND WHEREAS it is desirable to authorise Shri..... of the Company to negotiate the lease arrangements, finalise and sign the Lease Deeds and other relevant papers for getting machinery for installation at the works of the Company;

AND WHEREAS the Board of Directors of the Company vide Resolution No..... passed in their meeting held on..... have resolved to execute and register a General Power of Attorney in terms of the draft placed before the Board in favour of Shri....., of the Company and have authorised Shri....., director, to execute, sign, seal and if necessary register and deliver the said Power of Attorney.

NOW THIS POWER OF ATTORNEY WITNESSETH AS FOLLOWS:

That the Company hereby appoints Shri of the Company as its 'Attorney' so long as he is in the services of the Company and notwithstanding any change in his designation to do severally the following acts, deeds or things in the name on behalf of, and at the expenses of the Company:

1. To negotiate with any Leasing Company for leasing arrangements for taking plant and machinery on lease basis for installation at the Works of the Company;
2. To finalise, settle, execute and sign, and where necessary seal Lease Arrangements, other deeds and papers in connection therewith;
3. And generally to do all acts, deeds and things, as may be necessary for the above purpose;
4. And the Company hereby agrees that all acts, deeds or things lawfully done by the said Attorney under the authority of this Power of Attorney hereby given shall be construed as acts, deeds and things done by the Company and the Company undertakes to lawfully do or cause to be done by virtue of the powers hereby given.

IN WITNESS WHEREOF this Power of Attorney has been signed and sealed by Shri....., director, authorised in this behalf vide Board Resolution No.... dated on this....., day of 20.....

WITNESSES:

- 1.
- 2.

DIRECTOR

It is settled law in the case of a company, the power of attorney executed by the directors ceases to be operative as soon as an order for winding up is made as the directors cease to function [Fowler v. Broode P.N. Light & Co., (1893) 1 Ch. 724].

In view of this, it may be said that the General Power of Attorney executed on 4 December, 2023 ceases to be operative from 12 March, 2024 i.e. when the order of winding up is passed.

Answer 3(d)

In the case of *Aidqua Holdings (Mauritius) Inc. v. Tamil Nadu Water Investment Co. Ltd. and Others* (2008) 83 CLA 352 (CLB), it was held that if Articles provide for a specific place/city in which the meetings should be held, the meetings should be held only at that place/city. If a Meeting of the Board is held elsewhere, contrary to such clause in the Articles, none of the decisions taken by the Board at such meeting can be put into operation in any manner.

The same are liable to be set aside, because the decisions cannot be validated by any belated amendment of the Minutes of the Board Meeting at which the decision to hold the Board Meeting elsewhere may be purported to have been taken.

In the light of the above discussion, the meeting of the Board of Directors of Shabari Clinkers Limited held in Dwaraka instead of in Udupi lacks validity and the decisions taken thereat cannot be put into operation.

OR(Alternate question to Q. No. 3)

Question 3A

- (i) How it can be proved that a resolution is passed at a meeting of the Board of Directors of a Company ? Discuss.
- (ii) Girish Upadhyaya and a Hindu Undivided Family (HUF) entered into partnership agreement. The Karta of the HUF contended that all the members of family become ipso facto partners of the partnership. Discuss the tenability of the contention.
- (iii) Explain the Rule of Adverse Inference.
- (iv) Explain the contractual liabilities of a Company Secretary under the Companies Act 2013.

(4 marks each)

Answer 3A(i)

The only way to prove that a resolution was passed at the Board Meeting of the company is that the Minutes Book in which the particular Resolution was recorded should be produced before the Court, as that alone can form evidence of the fact that the Resolution was passed in the Board Meeting - *Escorts Ltd. v. Sai Auto* (1991) 72 Com. Cases 483 (Del).

Answer 3A(ii)

For the admissibility of any contention in the pleading should be in consonance with the law. It means any fact which cannot sustain before law cannot be pleaded likewise any alike contention cannot sustain before the court. The word "person" in Section 4 of the Indian Partnership Act, 1932 contemplated only natural and legal persons. (*Duli Chand v. C.I.T.*, AIR, 1956 SC 354). Partnership relation is one of contractual nature. Therefore, such persons who are competent to contract can enter into partnership. A firm or a Hindu Undivided Family is not a legal person and cannot enter into partnership with any person. When the Karta of a Joint Hindu Family enters into a partnership with strangers the other members of the family do not ipso facto become partners (*Firm Bhagat Ram v. Comm. of Excess Profits Tax*, AIR 1956 SC 374).

Therefore, it may be said that the contention of Karta is not tenable.

Answer 3A(iii)**Rule of Adverse Inference**

No evidence is required of matters which are, either formally admitted for the purposes of the trial, in civil cases, by the pleadings, by answer to interrogatories, by agreement or otherwise and in criminal cases, as regards proof of those documents admitted under Section 330 of Bharatiya Nagarik Suraksha Sanhita, 2023.

It is incumbent upon a party in possession of best evidence on the issue involved, to produce such evidence and if such party fails to produce the same, an adverse inference is liable to be drawn against such party. The Court will be justified in drawing an adverse inference against that party. [*Ms. Shefali Bhargava v. Indraprastha Apollo Hospital & Anr.*, 2003 NCJ 787 (NC)].

It is equally incumbent upon a party to produce evidence of some expert where the issue involved is a complex or difficult one as for instance, issues pertaining to engineering, medical, technology or science etc. Since the court cannot constitute itself into an expert body and contradict the claim/proposition on record unless there is something contrary on the record by way of expert opinion or there is any significantly acclaimed publication or treatise on which reliance could be based. [*Dr. Harkanwaljit Singh Saini v. Gurbax Singh & Anr.*, 2003 NCJ 800 (NC)].

Answer 3A(iv)**Contractual liabilities of Company Secretary**

A company secretary enters into a service contract with the company and accordingly he has several contractual liabilities which arise out of his service agreement. These may be as follows:

- (i) The secretary derives his powers from the Board; therefore, he should carry out the orders given to him.
- (ii) He should work for the company and should never allow his personal interest to clash with the interest of the company.
- (iii) He shall be liable to account for the secret profit made by him by virtue of his position as a secretary.
- (iv) He shall be personally liable if he acts beyond his authority.
- (v) He shall be liable for any loss or damage caused to the company by wilful misconduct or negligence in the discharge of his duties.
- (vi) He shall be liable to indemnify the company for any loss suffered by the company as a result of disclosure of some secret information relating to the company.
- (vii) He shall be liable for any fraud or wrong committed in the course of his employment.

However, if the secretary performs his duties diligently and honestly, he shall not be liable. The secretary shall also not be liable for any fraud by his assistants unless he is a party to such fraud.

Question 4

- (a) "An assignment is a form of transfer of property and it is commonly used to refer the transfer of an actionable claim or a debt or any beneficial interest in movable property". Discuss.
- (b) State the guidelines for entering into Foreign Collaboration Agreements.
- (c) Explain Outsourcing. Enumerate the key points to be considered while drafting an outsourcing agreement.

- (d) "An affidavit is a sworn statement in writing made specially under oath before an authorized officer". Discuss.

(4 marks each)

Answer 4(a)

An assignment is a form of transfer of property and it is commonly used to refer the transfer of an actionable claim or a debt or any beneficial interest in movable property.

A transfer of an actionable claim is usually called an assignment thereof. Section 3 of the Transfer of Property Act, 1882 defines an actionable claim as:

"Actionable claim means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of moveable property or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent"

The term assignment is, however, of wider import. It is well settled that a transfer of property clearly contemplates that the transferor has an interest in the property which is sought to be conveyed. Section 130 of the Transfer of Property Act, 1882 lays down the mode of transfer of actionable claim. It prescribes:

- (1) The transfer of an actionable claim whether with or without consideration shall be affected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent, and shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not;

Provided that every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

- (2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings, and without making him a party thereto."

Every notice of transfer of an actionable claim must be in writing signed by the transferor or his agent duly authorized in this behalf, or in case the transferor refuses to sign, by the transferee or his agent, and must state the name and address of the transferee. (Transfer of Property Act, 1882, Section 131).

Answer 4(b)

GUIDELINES FOR ENTERING INTO FOREIGN COLLABORATION AGREEMENTS

These guidelines cover the following aspects of foreign collaboration agreements:

1. **Investment:** wherein a foreign collaboration agreement, equity participation is involved, the value of the shares to be acquired about be brought in cash.
2. **Lump sum payment:** The amount agreed to be paid by an Indian party to a foreign collaborator technology transfer should be paid in three instalments as follows:
 - (i) one-third to be paid after the agreement has been approved by the Central Government;

- (ii) one-third on transfer of the technical documents; and
 - (iii) one-third on the commencement of commercial production.
- 3. Royalty:** Royalty payable to a foreign collaborator has to be calculated on the basis of net ex-factory selling price of the product less excise duties and cost of imported components. The normal rate of royalty may be three per cent to five per cent. This rate will depend upon the nature and extent of the technology involved. Payment of a fixed royalty is preferred by the Government in certain cases. There should be no provision for payment of a minimum guaranteed royalty, regardless of the quantum and value of production.
 - 4. Duration of agreement:** Normal period of a foreign collaboration agreement is eight years subject to maximum of ten years. The period is approved by the Government usually for five years from the date of the agreement in the first instance or five years from the date of commencement of commercial production: the total period, however, not exceeding eight years from the date of the agreement.
 - 5. Renewal or extension of agreement:** The Central Government may consider an application for renewal of a foreign collaboration agreement or for extension of its period on merit.
 - 6. Remittances:** Remittances to foreign collaborators are allowed only on the basis of the prevailing exchange rates.
 - 7. Sub-licensing:** An agreement shall not normally impose any restriction on the sub-licensing of the technical know-how to other Indian parties. The terms of such sub-licensing will be as mutually agreed to between all the concerned parties including the foreign collaborator. Sub-licensing is, however, subject to the Central Government's approval.
 - 8. Exports:** No foreign collaboration agreement shall be allowed to contain any restriction on the free export to all countries, except in a case where the foreign collaborator has licensing arrangements in which case the countries concerned shall be specified.
 - 9. Procurement of capital goods etc.:** There should be no restriction on procurement of capital goods, components, spares, raw materials etc. by the Indian party. The Indian collaborator must be free to have control over pricing facility and selling arrangements.
 - 10. Technicians:** The number, terms of service, remuneration, etc, of technicians to be deputed on either side are subject to approval of the Reserve Bank of India.
 - 11. Training:** Provision shall be made in the agreement for adequate facilities for training of Indian technicians for research and development.
 - 12. Exploitation of Indian patents:** Where any item of manufacture is patented in India, the payment of royalty or lump sum to the foreign collaborator should make provision for compensation for use of such patent until its expiry. There should also be provision for manufacture by the Indian company of the said item even after the expiry of the collaboration agreement without making any additional payment.
 - 13. Consultancy:** If the necessity for any consultancy arises, it should be obtained from an Indian company. If, however, in the special circumstances foreign consultancy becomes essential, even then the prime consultant should be an Indian company.
 - 14. Brand Name:** There should be no insistence on the use of foreign brand names on products for sale in India. There can, however, be no objection for use of foreign brand name on products to be exported to other countries.
 - 15. Indian Laws:** All collaboration agreements shall be subject to Indian laws.

16. Approval of Central Government: Every foreign collaboration agreement shall be approved by the Central Government.

While drafting a collaboration agreement, care should be taken that it is in strict compliance with the guidelines detailed above. Every collaboration agreement must contain one or more clause to the effect: "The agreement shall be subject to Indian laws. The agreement shall be subject to the approval of the Government of India".

Answer 4(c)

Outsourcing is the contracting out of a company's non-core, non-revenue producing activities to specialists. It differs from contracting in that outsourcing is a strategic management tool that involves the restructuring of an organization around what it does best - its core competencies.

The key points to be considered in the drafting of an outsourcing agreement are:

- Duties and obligations of Outsourcer
- Duties and obligations of service receiver
- Security and confidentiality
- Legal compliance
- Fees and payment terms
- Proprietary rights
- Auditing rights
- Applicable law to outsourcing agreement
- Term of the Agreement
- Events of Defaults and Addressing
- Dispute Resolution Mechanism
- Time limits
- Location of Arbitration and allied details
- Interim measures/Provisional Remedies
- Privacy Agreement
- Non-compete Agreement
- Confidentiality Agreement
- Rules Applicable
- Appeal & Enforcement
- Awareness of local peculiarities
- Survival terms after the termination of the outsourcing agreement.

Answer 4(d)

An affidavit is a sworn statement in writing made especially under oath before an authorized officer. Therefore, great care is required in drafting it. A Court may, at any time, for sufficient reason order that any particular fact or facts may be proved by affidavit or that the affidavit of any particular

witness may be read at the hearing, provided that the Court may order the deponent to appear in person in Court for cross-examination [Order XIX Rule 2(1) of Code of Civil Procedure, 1908 (CPC)].

Affidavits to be produced in a Court must strictly conform to the provisions of order XIX, Rule 1 of the Code of Civil Procedure, 1908 and in the verification, it must be specified as to which portions are being sworn on the basis of personal knowledge and which, on the basis of information received and believed to be true. In the latter case, the source of information must also be disclosed. Order XIX Rule 3 provides that affidavit should be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory application, on which statements on his belief may be admitted; provided that the grounds of such belief are stated. The following rules should be remembered when drawing up an affidavit:

- (1) Not a single allegation more than is absolutely necessary should be inserted;
- (2) The person making the affidavit should be fully described in the affidavit;
- (3) An affidavit should be drawn up in the first person;
- (4) An affidavit should be divided into paragraphs, numbered consecutively, and as far as possible, each paragraph should be confined to a distinct portion of the subject (Order XIX, Rule 5);
- (5) Every person or place referred to in the affidavit should be correctly and fully described, so that he or it can be easily identified;
- (6) When the declarant speaks of any fact within his knowledge he must do so directly and positively using the words "I affirm" or "I make oath and say";
- (7) Affidavit should generally be confined to matters within the personal knowledge of the declarant, and if any fact is within the personal knowledge any other person and the petitioner can secure his affidavit about it, he should have it filed. But in interlocutory proceedings, he is also permitted to verify facts on information received, using the words "I am informed by so and so" before every allegation which is so verified. If the declarant believes the information to be true, he must add "and I believe it to be true" or "I make oath and say" (Order XIX Rule 8).
- (8) When the application or opposition thereto rests on facts disclosed in documents or copies, the declarant should state what is the source from which they were produced, and his information and belief as to the truth of facts disclosed in such documents;
- (9) The affidavit should have the following oath or affirmation written out at the end:

"I swear that this my declaration is true, that it conceals nothing, and that no part of it is false". **Or** "I solemnly affirm that this my declaration is true, that it conceals nothing and that no part of it is false". Any alterations in the affidavit must be authenticated by the officer before whom it is sworn. An affidavit has to be drawn on a non-judicial Stamp Paper as applicable in the State where it is drawn and sworn.

An affidavit shall be authenticated by the deponent in the presence of an Oath Commissioner, Notary Public, Magistrate or any other authority appointed by the Government for the purpose.

- (10) Affidavits are chargeable with stamp duty under Article 4, Schedule I, Stamp Act, 1899. But no stamp duty is charged on affidavits filed or used in Courts. Such affidavits are liable to payment of Court fee prescribed for the various Courts.

Question 5

- (a) Draft a Lease Deed of a land with forfeiture clause and Covenant for Renewal. Assume Facts.

(6 marks)

- (b) Draft a specimen Notice of Extra-Ordinary General Meeting. Assume facts, if required.

(6 marks)

- (c) Explain the rule of Facta probantia in pleadings.

(4 marks)

Answer 5(a)**Deed of Lease of Land with Forfeiture Clause and Covenant for Renewal**

This LEASE is made on the day of, 20.... BETWEEN AB of, etc.: (hereinafter called "the lessor") of the one part and CD of, etc., (hereinafter called "the lessee") of the other part, WITNESSES as follows:

1. In consideration of the rent hereinafter reserved and the covenants and conditions hereinafter contained to be observed and performed on the part of the lessee, the lessor does hereby grant, transfer, demise by way of lease to the lessee ALL THAT piece or parcel or parcels of land described in the schedule below TO HAVE AND TO HOLD the same unto and to the use of lessee for the term of years commencing from the..... day of 2025 at the annual rent of Rupees
2. The lessor hereby covenants with the lessee as follows:
 - (a) The lessor shall put the lessee in possession of the said land on the said day of, 2025.
 - (b) Upon the lessee paying the rent hereby and hereunder reserved and observing and performing the covenants and conditions herein contained the lessee shall quietly and peacefully hold, possess and enjoy the said land during the said term without any claim, interruption or disturbance by the lessor or any person claiming under or in trust for him.
 - (c) The lessor has good right, full power and absolute authority to grant a lease of the demised premises in the manner hereunder effected.
3. The lessee hereby covenants with the lessor as follows:
 - (a) The lessee shall pay the said rent without abatement or deductions on or before the day of every year and the first of such payments shall be made on the day of, 2025.
 - (b) The lessee shall bear and pay all rents, taxes and other assessments and outgoings which are now or may hereafter be imposed or assessed on the said land except those which are payable in law by the lessor.
 - (c) The lessee shall not use and occupy the said land for any purpose other than private residence for himself and the member of his family by construction of temporary structures according to the plan approved by the Municipal Authority which may be necessary to prevent its forfeiture.
 - (d) The lessee shall not, except with the consent in writing of the lessor first had and

obtained, assign, underlet or part with the possession of the said land or any portion thereof or of the structures to be constructed thereon or any portion thereof which consent the lessor may at his absolute discretion withholds.

- (e) That if the lessee shall pay the rent punctually and regularly and duly observe and perform the conditions and covenants herein contained and apply in writing to the landlord not less than months prior to the expiration of the term herein reserved for renewal of the lease, the lessor shall then and in such an event grant to the lessee a new lease of the said land for a further period of years on the same terms and conditions as are herein contained except the covenant for renewal and subject to such variations as may be mutually agreed.
- (f) On the determination of the lease, the lessee shall deliver peaceful vacant possession of the land hereby demised as also the structures to be erected by the lessee without claiming any compensation or value thereof.

IN WITNESS, etc.,

Signed, sealed and delivered

AB

CD

The Schedule above referred to

Answer 5(b)

Specimen Notice of Extra-Ordinary General Meeting

Name of the Company.....

CIN

Registered Address

Email- Telephone:

Website:

NOTICE OF EXTRA-ORDINARY GENERAL MEETING

NOTICE is hereby given that an Extra-Ordinary General Meeting of the Members of..... Name of Company) will be held on (day)..... (date) at..... a.m./p.m. at (address) to transact the following special businesses:

1. Shifting of Registered Office

To consider and, if thought fit, to pass the following Resolution as a Special Resolution:

“RESOLVED THAT pursuant to Section 13 and other applicable provisions, if any, of the Companies Ac. Read thereunder (including any statutory modification(s) or re-enacted thereof for 2013 me being in force), and subject to the approval of the Regional Director, the Registered Office of the Company be shifted from the..... (Name of State) to the (Name of State) with effect from..... (Date).

RESOLVED FURTHER THAT Clause - II of the Memorandum of Association of the Company be altered by substitution of the words..... in place of the words.....

RESOLVED FURTHER THAT Mr..... and Mr..... the Board of Directors of the Company be and are hereby jointly/ severally authorized to do all such acts, deeds, matters, and things as deem necessary, proper and desirable and to sign, and execute all necessary documents, applications and returns for the purpose of giving effect to the aforesaid resolution along

with filing of Form INC-22 as a return of change in address registered office with the Registrar of Companies and to file the necessary petition(s) before the Regional Director,..... Region for confirmation of the alteration of Clause - II of the Memorandum of Association of the Company as aforesaid."

2. Appointment of Mr.....as Director

To consider and, if thought fit, to pass, with or without modification, the following Resolution as an Ordinary Resolution:

"RESOLVED THAT pursuant to the provisions of Sections 149, 150(2), 152 and any other applicable provisions of the Companies Act, 2013 and the rules made there under read with Schedule IV to the Companies Act, 2013, approval of the Company be and is hereby accorded for appointment of Mr..... (DIN..... No.....), as an Independent Director of the Company to hold the office for a period of 3 years i.e. up to..... AND THAT by virtue of subsection (13) of Section 149 of the Companies Act, 2013 he shall not be liable to retire by rotation."

By Order of the Board of Director

Place.....

Date: 20.....

For.....

..... (Signature)

..... (Name)

Director/Company Secretary

DIN/ACS/FCS No.....

Answer 5(c)

Facts Probandia

These are the facts which are not to be stated because by their means *facta probanda* are proved. Thus, these facts are the evidence as to the existence of certain facts on which the party relies for his cause of action or defiance as the case may be. *Facta probanda* are not facts in issue, but they are relevant in that at the trial their proof will establish the existence of facts in issue. No doubt in certain cases both the facts in issue and their facts in evidence are mixed up and are almost indistinguishable. They should not be stated in the pleading.

For example, A was married to B in accordance with a particular custom governing marriage between A and B. In this case the "custom" is a both fact in issue and a fact in evidence, because once the custom is proved, then the marriage also, stands proved. In the pleading, it is sufficient to allege that the marriage was celebrated in accordance with a particular custom. At the evidence stage, it will be sufficient to refer to the manual of customary law which records customs.

Question 6

Write short notes on the following :

- Res judicata and Bar to Further Suits.
- Stages of Criminal Trial in a Summons case.
- The importance of 'Disclaimers' in the drafting of opinions by an expert.
- Reference and Review under Civil Procedure Code 1908.

(4 marks each)

Answer 6(a)

The principle of *res judicata* aims at bringing finality to the litigation. The basic principle is that a final judgement rendered by a court of competent jurisdiction is conclusive on merits as to rights of the parties and constitutes an absolute bar against subsequent action involving the same claim. The principle of *res-judicata* applies under following circumstances:

- (i) The matter directly and substantially in issue has been directly and substantially in issue in a former suit between same parties or between whom they claim litigation under the same title.
- (ii) The matter is in the court competent to try such subsequent suit or the suits in which such issue has been subsequently raised and has been heard and finally decided.

The word former suit means suit decided prior, irrespective of the date of institution. The matter must be decided on merits i.e. the issue was alleged by one party and denied by the other. The principle of *res-judicata* is one of convenience and not one of absolute justice and it should not be unduly conditioned and qualified by technical interpretations.

Answer 6(b)**Stages of Criminal Trial in a Summons Case**

1. **Pre-trial:** In the pre-trial stage, the process such as filing of FIR and investigation is conducted.
2. **Charges:** In summons trials, charges are not framed in writing. The accused appears before the court or is brought before the court then the Magistrate would orally state the acts of the offense, he is answerable.
3. **Plea of guilty:** The Magistrate after stating the facts of the offence will ask the accused if he pleads guilty or has any defence to support his case. If the accused pleads guilty, the Magistrate records the statement in the words of the accused as far as possible and may convict him on his discretion.
4. **Plea of guilty and absence of the accused:** In cases of petty offences, where the accused wants to plead guilty without appearing in the court, the accused should send a letter containing an acceptance of guilt and the amount of fine provided in the summons. The Magistrate can on his discretion convict the accused.
5. **Prosecution and defence evidence:** In summons case, the procedure followed is very simple and elaborate procedures are eliminated. If the accused does not plead guilty, then the process of trial starts. The prosecution and the defence are asked to present evidence in support of their cases. The Magistrate is also empowered to take the statement of the accused.
6. **Judgement:** When the sentence is pronounced in a summons case, the parties need not argue on the quantum of punishment given. The sentence is the sole discretion of the judge. If the accused is acquitted, the prosecution has the right to appeal. This right to appeal is also extended to the accused.

Answer 6(c)

Disclaimers can save the opinion giver from being reported for malpractice if the opinion is wrong. Under the disclaimer, it is written that the opinions provided are based on the law as per the time of drafting the opinion. Moreover, it is also indicated that the opinion is also based on the documents and facts provided. All the documents that the clients provided for the sake of drafting the legal opinion can also be listed.

1. Clarifies the Scope and Limitations

Disclaimers help set boundaries on what the opinion covers and what it does not. This avoids over-interpretation or misuse of the opinion in areas it was never meant to address.

2. Limits Legal Liability

An expert may be exposed to professional negligence claims if their opinion is misconstrued. A disclaimer helps restrict liability to the extent intended by the expert.

3. Prevents Misrepresentation or Third-party Reliance

Disclaimers make it clear that the opinion should not be relied upon by third parties or used out of context—such as for marketing or misguiding investors.

4. Protects Against Incomplete or Inaccurate Information

If an expert's opinion is based on data or documents supplied by the client, disclaimers help by stating that the expert is not responsible for any errors or omissions in such data.

Answer 6(d)**REFERENCES****Reference under Section 113 and Order XLVI, Civil Procedure Code, 1908**

- (a) A reference should be made to the High Court by a District Judge or Judge of a Court of Small Causes, under the provisions of Section 113 and Order XLVI, Rule I of the Code of Civil Procedure, only when the presiding Judge entertains a reasonable doubt on the point of law or usage having the force of law referred, and not merely on the importunity of pleaders.
- (b) A proviso has been added to Section 113 of the Code by the Codes of Civil Procedure and Criminal Procedure (Amendment) Act, 1951 (No. XXIV of 1951). Now where a Court finds that it is necessary for the disposal of a case to decide a question about the validity of any Act, Ordinance or Regulation and the Court is of the opinion that the Act, Ordinance or Regulation is invalid or inoperative but has not been so declared by the High Court of that State or the Supreme Court, the Court shall refer the matter in the manner laid down for the opinion of the High Court.

"Reasonable doubt on a point of law"

A subordinate Court cannot be supposed to entertain a reasonable doubt on a point of law if it has been decided clearly in a ruling of the High Court, unless some doubt has been thrown on the correctness of the same by a ruling of the Supreme Court. Nor has an Appellate Court, which has no jurisdiction to hear an appeal, any jurisdiction to make a reference.

Mode of reference

In making a reference the presiding Judge should be careful to conform to the requirements of Order XLVI, Rule I, of the Code of Civil Procedure, 1908 by:

- (i) drawing up a statement of the facts;
- (ii) stating the point on which doubt is entertained; and
- (iii) stating his opinion on such point.

Each of the above statement should be precise and clear, or the High Court will find itself compelled to return the reference for amendment under Order XLVI, Rule 5, of the Code of Civil Procedure, 1908.

References under Order XLVI, Rule 7

It should also be noted that, by the terms of Order XLVI, Rule 7, a reference may be made only when it appears to the District Court that a Court subordinate to it has by reason of erroneously holding a suit to be cognizable by a Court of Small Causes, or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested; unless this condition is fulfilled - that is, unless the Court is itself of opinion that one of these errors has been committed, - it has no power to refer; when that condition is fulfilled, the Court still has a discretion to make or refuse to make a reference unless it be required to make it by a party. In the latter case, the Court is bound to make a reference.

REVIEW

Section 114 of Code of Civil Procedure, 1908

Review means re-examination or re-consideration of its own decision by the very same court. An application for review may be necessitated by way of invoking the doctrine '*actus curiae neminem gravabit*' which means an act of the court shall prejudice no man. The other maxim is, '*lex non cogit ad impossibilia*' which means the law does not compel a man to do that what he cannot possibly perform.

Section 114 of the Code of Civil Procedure, 1908 provides for a substantive power of review by a civil court and consequently by the appellate courts. Section 114 of the code although does not prescribe any limitation on the power of the court but such limitations have been provided for in Order 47, Rule 1 of the CPC.

The section is worded as follows:

Section 114. Review- Subject as aforesaid, any person considering himself aggrieved -

- (a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,
- (b) by a decree or order from which no appeal is allowed by, this Code, or
- (c) by a decision on a reference from a Court of Small Causes,

may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

An 'aggrieved' person is one who has suffered a legal grievance, i.e., against whom a decision has been pronounced which has wrongfully affected his title or wrongfully deprived him of something which he was entitled to.

All decrees or orders cannot be reviewed. The right of review has been conferred by section 114 and Order XLVII of the Code of Civil Procedure, 1908.

[illegible]

NOTES

[illegible]